

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 211

DELBERT O. STARK, A. F. STRATTON, A. R.
DENTON, G. STEBBINS AND F. WALSH, PETI-
TIONERS,

vs.

CLAUDE R. WICKARD, SECRETARY OF AGRI-
CULTURE OF THE UNITED STATES, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA

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PERTINENT DOCKET ENTRIES IN DISTRICT COURT

Date

1941 Sept. 22 Complaint.
 " 22 Summons & copy (1) of complt. issued.
 Served 9/25/41.
 Nov. 25 Motion of Deft. for summary judgment.
 1942 Feb. 11 Motion for summary judgment heard and
 submitted by O'Donoghue, J.
 12 Order overruling motion for summary
 judgment. W.P. 30 days to answer.
 O'Donoghue, J.
 Mch. 7 Answer of Deft. to complt.
 May 12 Motion for dismissal of first defense.
 " 27 Final judgt. dismissing cause. / Adkins,
 J. (n).
 June 22 Notice of appeal by Plff. (copy of Notice
 of Appeal mailed by Clerk to John Yost,
 Dept. of Justice) filed.

**COMPLAINT TO RESTRAIN CERTIFICATION FOR
PAYMENTS**

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF COLUMBIA.

Civil Action, File Number 12944.

**DELBERT O. STARK,
A. F. STRATTON,
A. R. DENTON,
G. STEBBINS,
F. WALSH,**

v.

**CLAUDE R. WICKARD, Secretary of Agri-
culture of the United States.**

[1]

1. The plaintiffs herein are citizens of the States of New York, Maine, New Hampshire and Vermont, residing in the respective places stated after their names at the end hereof. The plaintiffs bring this bill for themselves and for the benefit of all other persons similarly situated.

2. The defendant is Claude R. Wickard, the Secretary of Agriculture of the United States, whose official residence is in Washington, D. C.

3. Each of the plaintiffs produces milk and sells the same to "handlers", who resell and distribute such milk in the Greater Boston, Massachusetts, marketing area as defined by Order No. 4, as amended, issued by the defendant, the Secretary of Agriculture under the agricultural Marketing Agreement Act of 1937, 50 Stat. 246, U. S. C. Title 7, §601, et seq., which amends and reenacts certain provisions of the Agricultural Adjustment Act of 1933,

48 Stat. 31, as amended 49 Stat. 750, as hereinafter more fully appears, and each of the plaintiffs is a "producer" as defined in said Order No. 4 as amended.

4. Said Order No. 4 was amended by the defendant on July 29, 1941, effective August 1, 1941, and is presently effective as so amended. 6 Federal Register 3762. Said Order No. 4 regulates the handling of milk sold in the Greater Boston, Massachusetts, marketing area; and to that end fixes minimum prices which shall be paid by all handlers for such milk, the value thereof being determined in accordance with the use of such milk by the handlers to whom it is sold; and provides for the equalization of such payments by handlers so that, subject only to certain adjustments set forth in said Order, all producers shall receive a uniform blended price per hundredweight for such milk, irrespective of the use to which it may be put by the handlers to whom it is sold. A true copy of said Order No. 4 is attached hereto, marked "Exhibit A".

5. Section 904.9 of said Order No. 4 requires the Market Administrator (who is the agent appointed and removable by the defendant) to make certain payments on the 25th day of each calendar month to cooperative associations of producers which the defendant Secretary of Agriculture has determined to be qualified therefor in accordance with the terms of said Section. Said payments, consisting of $1\frac{1}{2}$ cents per hundredweight of milk marketed by any such cooperative association on behalf of its members and of 5 cents per hundredweight of Class I milk received from producers at a plant operated under the exclusive control of member producers and sold to proprietary handlers, purport to be payable in the manner and subject to the limitations more specifically set forth in Exhibit A hereto, to which reference is hereby made. None of the plaintiffs is a member of a cooperative association which is or may be eligible for such payments, and because of the foregoing provisions of Section 904.9, many of the plaintiffs voted

against the adoption of said amendment to Order No. 4 promulgated on July 29, 1941, at the time said amendment was submitted to a producers' referendum pursuant to Section 8c(9) of the Agricultural Marketing Agreement Act of 1937 (U. S. C. Title 7, §608c(9)).

6. Said Order No. 4 required such payments to co-operative associations from funds paid pursuant to Section 904.8(b)(3) of said Order No. 4, by handlers the value of whose milk during the preceding month, as determined in accordance with the minimum prices fixed by Section 904.4, exceeds their payments to producers therefor, as determined in accordance with the uniform blended price computed and announced pursuant to Section 904.7.

7. The plaintiffs, together with all other producers whose milk is marketed pursuant to said Order No. 4, are paid the blended price as computed and announced by the Market Administrator pursuant to Section 904.7. Said blended price is computed by dividing the value of all milk purchased by handlers during the preceding month, as determined on the basis of the minimum prices fixed by Section 904.4 according to the uses made of such milk, by the total volume of milk so included. Notwithstanding lack of authority therefor, as hereinafter more fully appears, subparagraph (b)(5) of said Section 904.7 further provides that there shall be deducted from the value of such milk the amount of the payments required to be made to co-operative associations pursuant to Section 904.9—all as more specifically set forth in Exhibit A hereto, to which reference is hereby made. As a result of said unauthorized and illegal deduction the blended price announced by the Market Administrator is less than the average value of the milk marketed pursuant to said Order No. 4 by the plaintiffs and other producers serving the Greater Boston marketing area.

8. On information and belief, the Market Administrator has sent to each cooperative association operating in the Greater Boston marketing area a form of application to the defendant for qualification as a cooperative association to receive the payments specified in said Section 904.9, accompanied by a questionnaire to be returned therewith setting forth information relative to the requirements of said Section. On information and belief, the foregoing action of the Market Administrator was taken on behalf of the defendant Secretary of Agriculture, and numerous applications, together with accompanying questionnaires, have been submitted to the defendant by cooperative associations seeking to be determined as eligible for the payments specified in said Section 904.9.

9. On September 12, 1941, the Market Administrator announced the blended price applicable to milk delivered to handlers during August, 1941, by the plaintiffs and other producers serving the Greater Boston marketing area, and made public the computations thereof and certain further information as required by Section 904.7 of said Order No. 4. A true copy of said announcement, marked "Exhibit B," is attached hereto. Said announcement discloses that the sum of \$15,575.31 was deducted pursuant to Section 904.7(b)(5) for payments to cooperative associations to be certified by the defendant Secretary of Agriculture as above with respect to deliveries made during August, 1941.

10. The plaintiffs are informed and believe that the defendant Secretary of Agriculture is about to determine, or has already determined, pursuant to Section 904.9 that certain cooperatives are qualified and entitled to receive the payments specified by said Section 904.9; whereupon such payments will be made on or before September 25, 1941, with respect to milk delivered in the month of August, 1941.

11. Upon the qualification of any cooperative association by the defendant Secretary of Agriculture on or before September 25, 1941, immediate payment is to be made to such cooperative from the funds set aside for that purpose in the computation of the blended price for August, 1941, from the total milk payments by handlers for milk delivered to them, which funds will be received by the Market Administrator on September 23, 1941, pursuant to Section 904.8(b)(3) of said Order No. 4. Further, upon the qualification of any cooperative, similar payments will be made in all succeeding months and similar deductions will be made in computing the blended price payable to the plaintiffs in all succeeding months.

12. As shown by the Market Administrator's announcement attached hereto as Exhibit B, the deduction of \$15,575.31 made by the Market Administrator pursuant to Section 904.7(b)(5) in computing the blended price for August, 1941, resulted in decreasing the price to be received by the plaintiffs for milk delivered in said month by 1.55 cents per hundredweight. Larger deductions in succeeding months, upon the issuance of further qualifications by the defendant, will result in further decreases in the blended price to be received by the plaintiffs. The monthly deliveries made by each plaintiff range from 7,000 pounds to 26,000 pounds; and the reduction in the blended price by $1\frac{1}{2}$ cents or more to provide for the cooperative payments specified in Section 904.9 will result in annual losses to the individual plaintiffs ranging from \$10.50 to more than \$39.00 per year.

13. Said Order No. 4 as amended is promulgated under the authority of Sections 8c(5) and (7) of the Agricultural Marketing Agreement Act of 1937. Section 8c(5) specifies the terms which may be included in an order affecting milk and its products and reads in part as follows:

"In the case of milk and its products, orders issued pursuant to this section shall contain one or more of

the following terms and conditions, and (except as provided in subsection (7) no others: " * * * "

None of the provisions of Section 8c(5) thereafter enumerated, or of subsection (7) therein referred to, authorizes Sections 904.9(a)-(d) and 904.7(b)(5) of said Order No. 4. Said provisions were issued as part of said Order No. 4 by the defendant Secretary of Agriculture without legal authority, and are unlawful and void; and said defendant, is without legal authority to make any qualifications of or to certify, any cooperative association as eligible for the payments specified in said Sections.

14. Unless the relief sought herein is granted, the plaintiffs are informed and believe that the defendant Secretary of Agriculture will forthwith issue qualifications to certain cooperatives whose applications therefor are now pending before him. Thereupon payments will be made to such cooperatives for deliveries of milk made in August, 1941, and said fund of \$15,575.31 will be dispersed and irretrievably lost to the plaintiffs and other producers serving the Greater Boston marketing area, to whom it rightfully belongs and to whom it should instead be paid in accordance with the provisions of said Agricultural Marketing Agreement Act of 1937; and further, in succeeding months similar funds will likewise be distributed in unlawful payments to cooperative associations and will likewise be dispersed and irretrievably lost to the plaintiffs and other producers, all of whom are entitled to be paid the blended price computed without deduction for such unlawful payments.

15. The aforesaid illegal deductions would deprive the plaintiffs and over six thousand other dairy farmers similarly situated of more than \$60,000.00 per year at a time when the plaintiffs and such other farmers require full payment for their milk in order to meet the rising costs of milk production.

16. The plaintiffs are not afforded a method of administrative relief in the aforesaid Agricultural Marketing Agreement Act of 1937 as amended, or otherwise; and said plaintiffs are without adequate remedy at law.

WHEREFORE, the plaintiffs pray:

(1) That a temporary restraining order be issued, enjoining the defendant from qualifying or certifying the qualification of any cooperative association of producers under Section 904.9 of said Order No. 4 as amended, and requiring the defendant to suspend any such qualifications or certifications theretofore made.

(2) That a preliminary injunction be issued during the pendency of this action, enjoining the defendant from qualifying or certifying the qualification of any cooperative association of producers under Section 904.9 of said Order No. 4 as amended, and requiring the defendant to suspend any such qualifications or certifications theretofore made.

(3) That a permanent injunction be issued, enjoining the defendant from qualifying or certifying the qualification of any cooperative association of producers under Section 904.9 of said Order No. 4 as amended, and requiring the defendant to withdraw or cancel any such qualifications or certifications theretofore made.

(4) That the Court declare the provisions of Section 904.9(a)-(d) and Section 904.7(b)(5) of said Order No. 4 to be unauthorized, illegal and void.

(5) That the plaintiffs have such other and further relief as is just.

Respectfully submitted,

DELBERT O. STARK,
Randolph, Vermont,
A. F. STRATTON,
Corinna, Maine,
A. R. DENTON,
Stowe, Vermont,
GEORGE STEBBINS,
Enosburg, Vermont,
FRANCIS WALSH,
Greenwich, N. Y.,

By their attorney,

Harry Polikoff,
HARRY POLIKOFF,
525 Lexington Ave.,
New York, N. Y.

Local Counsel:

WALTER J. BROBYN,
716 Investment Bldg.,
Washington, D. C.

STATE OF VERMONT, }
ORANGE COUNTY, } ss.:

September 20, 1941.

Then personally appeared before me DELBERT O. STARK, one of the plaintiffs named in the foregoing complaint, to me known, and deposed and said that he had read the foregoing complaint, and that the allegations contained therein are true to his own knowledge, except such allegations as are made on information and belief, and as to such allegations he believes them to be true; and that, unless a temporary restraining order is issued, the plaintiffs will suffer immediate and irreparable injury as alleged in said complaint.

DELBERT O. STARK (sgd.),
Plaintiff and Affiant.

Subscribed and sworn to before me,

PHILIP A. ANGELL (sgd.),

Notary Public.

(Seal) My commission expires Feb. 10, 1943.

EXHIBIT A

Exhibit A of Complaint (Order No. 4 as amended) appears *infra*, this Appendix.

EXHIBIT B

MARKET ADMINISTRATOR
for the
GREATER BOSTON MARKETING AREA
UNIFORM PRICES FOR 3.7 MILK, BY ZONES
August 1-31, 1941

*Blended Price
per cwt. to
Regular Producers**

*Class II Price
per cwt. to
New Producers*

For milk delivered to plants
located within 40 miles of
the State House in Boston

\$2.911

\$2.228

For milk delivered to plants
located more than 40 miles
from the State House in
Boston, as follows:

Zone	Miles		
6	51-60	2.595	2.058
10	91-100	2.569	2.058
11	101-110	2.565	2.058
12	111-120	2.560	2.058
13	121-130	2.552	2.058
14	131-140	2.542	2.058
15	141-150	2.527	2.058
16	151-160	2.513	2.058
17	161-170	2.513	2.058
18	171-180	2.490	2.058
19	181-190	2.481	2.058
(20	191-200	2.470	2.058)
21	201-210	2.470	2.058
22	211-220	2.442	2.058
23	221-230	2.436	2.058
24	231-240	2.432	2.058
25	241-250	2.432	2.058
26	251-260	2.421	2.058
27	261-270	2.415	2.058
28	271-280	2.410	2.058
29	281-290	2.410	2.058
30	291-300	2.400	2.058

*Handler subject to provisions of Section 904.6(d)

* **LOCATION DIFFERENTIALS**—To the above prices to **REGULAR PRODUCERS** ONLY are to be added the following amounts:

For milk from farms located within 40 miles of the State House in Boston or located in Barnstable or Plymouth Counties, Massachusetts.....	46¢ per cwt.
For milk from farms located within 41-80 miles of the State House in Boston.....	23¢ per cwt.

BUTTERFAT DIFFERENTIAL—To all producers, for each 1/10 of 1% variation from 3.7% test.....\$.052

DEDUCTIONS—From all the above prices, deductions are to be made as follows:

From members of qualified associations (Sec. 904.9(e)).

Such deductions as are authorized by members.

**MARKET ADMINISTRATOR—GREATER BOSTON
MARKETING AREA**

**HANDLERS WHOSE MILK WAS INCLUDED IN
THE BLENDED PRICE COMPUTATION**

For the period August 1-31, 1941

Ashland Farms Milk Co.
 Bellows Falls Co-op. Creamery, Inc.
 J. C. Black & Son
 A. Louis Bodge
 W. T. Boyd & Sons, Inc.
 James A. Bustead Co., Inc.
 David Buttrick Co.
 Cabot Farmers' Co-op. Creamery Co., Inc.
 Guy B. Chaloner
 George L. Chapin
 Cloverluck Dairy, Inc.
 C. W. Coburn
 S. Colombosian
 Michael W. and Daniel L. Comiskey, d/b/a Valley Farm
 Albert H. Crompton—

B. L. Cummings, Inc.
 J. M. Curran, d/b/a Our Haven Farm Dairy
 Louis W. Dean, d/b/a Dean Dairy
 Deerfoot Farms Company
 James deNormandie and Floyd Verrill, d/b/a The Dairy
 Logan R. Dickie, Jr., d/b/a Chestnut Hill Farm
 Dunajski Bros.
 Elliott Creameries, Inc.
 Elm Spring Farm Co-operative
 Fairview Creamery, Inc.
 Margaret A. Forbes, d/b/a Forbes Milk Company
 Mason Garfield, d/b/a River Road Farm
 Rocco L. Grasso, d/b/a Needham Dairy
 Benjamin R. Greenblott, d/b/a Hillcrest Farm Dairy
 Melville G. Grey, d/b/a Greycroft Farm
 Joseph L. Griffin
 John B. Henshaw & Son, Inc.
 Hillside Dairy Co., Inc.
 Harold W. Holden Corp.
 H. P. Hood & Sons, Inc.
 Frank T. Hutchinson, d/b/a Dell Dale Farm
 Kiley Farm
 Mrs. L. L. Kinsman, d/b/a Kinsman's Dairy
 George J. Knapp, Inc.
 John Kordalski
 August Korkatti, d/b/a Woodland Farm Dairy
 Harry Lanzillo, d/b/a Happy Valley Dairy
 F. W. Laroe and John E. Burr, d/b/a Laroe & Burr
 Walter Lovelace, d/b/a Lovelace Bros.
 Lyndonville Creamery Assn.
 Leo W. Madigan, d/b/a Maplehurst Farms
 Manchester Dairy System, Inc.
 Maple Hill Farm Dairy, Inc.
 Mrs. Lucinda A. Martin
 Martines Bros.
 Mason's Creamery Co.
 J. F. McAdams & Bros., Inc.

McCarty Bros. Milk Co., Inc.

A. J. McNeil & Sons, Inc.

Meadow Brook Farm, Inc.

Milton Co-op. Dairy Corp.

New England Dairies, Inc.

Norway Creamery, Inc.

* A. R. Parker Company

Pezold Creamery, Inc.

George W. Pierce, d/b/a Groveland Dairy

J. B. Prescott Co., Bedford Farms Dairy

Putnam Bros.

M. J. Quinn

Anthony W. Recka

A. J. Robinson, d/b/a Mountain View Creamery

St. Albans Co-op. Creamery, Inc.

John A. Sellars Dairy, Inc.

Seven Oaks Company, Inc.

Patrick J. Shanahan, d/b/a Lawrence Farms Milk Co.

Shawsheen Dairies, Inc.

John and Joseph Silva, d/b/a Paramount Dairy

Jacob Soroko, d/b/a Soroko's Farm Dairy

So. Strafford Creamery, Inc.

Clinton D. Spear

H. L. Stone Dairy, Inc.

United Farmers' Co-op. Creamery Assn., Inc.

Valley View Creamery, Roland Seward

Vermont Dairy Co., Inc.

Weiler-Sterling Farms Co.

Wells River Creamery, Inc.

White Bros.

White Bros. Milk Co., Inc.

White Creamery Co., Inc.

Whiting Milk Company

Granville A. Wiswall

Martin Witte, Trustee for Shawsheen Dairy, Inc.

* Handler subject to provisions of Section 904.6(a)

MARKET ADMINISTRATOR—GREATER BOSTON, MASSACHUSETTS,
MARKETING AREA

EXTRACTS FROM THE COMPUTATIONS WHICH RESULTED IN THE
UNIFORM PRICES ANNOUNCED FOR THE AUGUST 1-31, 1941 PERIOD
(Sec. 904.7(b)(9))

Sec. 904.7(b).

(1) Total of the respective values of milk.....	\$2,577,812.71	
(2) Total amount of payments required from handlers pursuant to Sec. 904.8(g) and (h).....		3,099.90
(3) Total net amount of the differentials applicable pursuant to Sec. 904.8(e).....		232,941.90
		<hr/> \$2,813,854.51
(4) Total amount to be paid to producers pursuant to Sec. 904.8(b)(2) (New Producers)	\$ 6,299.95	
(5) Total of payments required to be made for the delivery period pursuant to Sec. 904.9(b)	15,575.31	21,875.26
		<hr/> \$2,791,979.25
(6) Total milk received from regular producers. 100,571,285 lbs. Blended price per cwt.....		\$2.776
(7) Deduction for the purpose of retaining a cash balance045
		<hr/> \$2.731
(8) Addition for the purpose of prorating cash balance available050
Basic blended price from which zone prices are cal- culated		<hr/> \$2.781

	<i>Pounds of Milk</i>	
	<i>Total</i>	<i>Daily Average</i>
Total Receipts reported.....	100,875,197	3,254,039
Net Class I Milk reported.....	54,158,191	1,747,038
% Class I Milk to Total Receipts	53.69%	

Office of the Market Administrator
Room 746, 80 Federal Street, Boston, Mass.
September 12, 1941

ANSWER

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA.

<p>DELBERT O. STARK, et al., Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>CLAUDE R. WICKARD, Secretary of Agriculture for the United States, Defendant.</p>	}	<p>Civil Action No. 12944</p> <p style="text-align: right;">[13]</p>
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Claude R. Wickard, Secretary of Agriculture of the United States, answering the complaint exhibited against him herein, respectfully shows unto the Court:

FIRST DEFENSE

1. The complaint fails to state a claim against the defendant upon which relief can be granted.

SECOND DEFENSE

2. The defendant admits the allegations of paragraph 1 of the complaint with respect to the citizenship and residence of the plaintiffs, but avers that the essential elements of a class action are lacking and denies that plaintiffs herein

may prosecute this case "for the benefit of all other persons similarly situated".

3. The defendant admits the allegations of paragraphs 2, 3, 4, 5, 6, 8 and 9 of the complaint.

4. The defendant admits the allegations of paragraph 7, except the allegations that "all other producers whose milk is marketed pursuant to said Order No. 4 are paid the blended price as computed and announced by the Market Administrator pursuant to section 904.7"; the allegation that sub-paragraph (b)(5) of Section 904.7 of the order lacks "authority therefor"; and the allegation that the deductions therein mentioned are "unauthorized and illegal"; which allegations are denied. With respect to the first of said allegations denied as aforesaid, the defendant avers that many of the producers whose milk is marketed pursuant to Order No. 4 have demanded, and have been paid by handlers, prices higher than the announced blended price.

5. The allegations of paragraph 10 are admitted, except that it is denied that, at the time of the filing of the complaint, the Secretary of Agriculture had determined that certain cooperatives were qualified and entitled to receive payments; and that any such payments were made on or before September 25, 1941.

6. The allegations of paragraph 11 of the complaint purport merely to set forth the requirements of certain provisions of Order No. 4, as amended, and are admitted to the extent that they are not inconsistent with such provisions.

7. The allegations of paragraph 12 of the complaint are denied, except that it is admitted that the Market Administrator, in making the computations as required under Order No. 4, as amended, for the period August 1-31, 1941, set aside a reserve of \$15,575.31 to cover any payments required to be made for such delivery period pursuant to Section 904.9(b) of Order No. 4, as amended; that the

monthly deliveries made by the plaintiffs range, respectively, from 7,000 pounds to 26,000 pounds. Further answering said paragraph, defendant avers that, although the computations by which the plaintiffs reach the figure of 1.55 cents per hundredweight mentioned in said paragraph 12 appear to be mathematically correct, it does not follow that the blended price established under the order as the minimum price payable to the plaintiffs for milk would be 1.55 cents higher in the absence of the amendments complained of. The amount of the blended price is the result of the operation of the entire plan for orderly marketing embodied in the federal order. It is impossible to establish that in the absence of one element of the plan the remaining elements will operate without change. The conclusion reached by the plaintiffs that, on the basis of the volume of milk which they regularly deliver, the payments to cooperative associations authorized by the amendments will result in annual losses to the individual plaintiffs ranging from \$10.50 to approximately \$39.00 per year is not supported by adequate promises because the computation by which the alleged rate of reduction of 1.55 cents per hundredweight is reached is based on the blended price achieved by the plan of marketing which incorporates the amendments and the incentive to orderly marketing inspired and encouraged by the amendments. Loss to the plaintiffs cannot be shown because it is obviously impossible to determine for the purposes of comparison what the blended price would have been in the absence of such amendments. Furthermore, the announced blended price is at all times merely a minimum price payable to all producers supplying the market and the producer is free to demand and to receive any amount over and above the announced blended price.

8. The allegations of paragraphs 13 of the complaint are legal conclusions only, which the defendant is advised he is not required to answer, but, insofar as answer is required, said allegations are denied.

9. The allegations of paragraph 14 of the complaint are denied, except that it is admitted that the defendant intends to perform the duties required of him by the provisions of Order No. 4, as amended:

10. The allegations of paragraph 15 of the complaint are denied.

11. The allegations of paragraph 16 of the complaint are merely legal conclusions which the defendant is not required to answer, but, insofar as answer may be required, said allegations are denied and the defendant avers that, on the contrary, the plaintiffs are not subject to regulation under the Agricultural Marketing Agreement Act of 1937 or Order No. 4, as amended; that the plaintiffs are not required by said act and said order to do or to refrain from doing anything whatsoever, and the plaintiffs are free to demand and to receive from persons purchasing their milk any price which they desire in excess of the blended price announced by the Market Administrator under Order No. 4, as amended.

WHEREFORE, having fully answered the complaint, the defendant demands that the complaint herein be dismissed at the cost of the plaintiffs.

EDWARD M. CURRAN,
United States Attorney.

BERNARD J. LONG,
Assistant United States Attorney,
United States Court House,
Washington, D. C.

JOHN S. L. YOST,
Special Assistant to the Attorney General,
Department of Justice,
Washington, D. C.

FINAL JUDGMENT

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA.

DELBERT O. STARK, et al.,
Plaintiffs,

v.

CLAUDE R. WICKARD, Secretary of Agriculture of the United States,
Defendant.

Civil Action
No. 12944

[17]

The above entitled cause having come on to be heard upon the motion of the plaintiff to dismiss the first defense set forth in the defendant's answer, and all parties having agreed to consider the motion as a preliminary hearing on the first defense contained in the answer, and the Court having heard counsel for the respective parties in argument on the first defense aforesaid, and being advised, it is hereby:

ADJUDGED, ORDERED and DECREED as follows:

1. The first defense set forth in the defendant's answer be and it is hereby sustained.
2. The complaint be and it is hereby dismissed. Exception allowed the plaintiffs.

JESSE C. ADKINS,
United States District Judge.

Approved as to form:

HARRY POLIKOFF,
Attorney for Plaintiffs.

JOHN S. L. YOST,
Attorney for Defendant.

NOTICE OF APPEAL

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA.

D. O. STARK, A. F. STRATTON, A. R. DENTON,
GEO. STEBBINS and F. WALSH,
Plaintiffs,

vs.

Civil
No. 12944

CLAUDE R. WICKARD, Secretary of Agriculture of the United States,
Defendant.

[18]

Notice is hereby given this day of June, 1942, that D. O. Stark, A. F. Stratton, A. R. Denton, Geo. Stebbins and F. Walsh, plaintiffs herein, hereby appeal to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 27th day of May, 1942, in favor of defendant against said plaintiffs, dismissing the complaint to enjoin said defendant.

WALTER J. BROBYN,
HARRY POLIKOFF,
Attorneys for Plaintiffs.

Local Counsel:

WALTER J. BROBYN,
Investment Bldg.,
Washington, D. C.

STIPULATION

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF COLUMBIA.

DELBERT O. STARK, et al.,

Plaintiffs,

v.

CLAUDE R. WICKARD, Secretary of Agriculture of the United States,
Defendant.

Civil Action
No. 12944

[20]

It is hereby stipulated by and between the plaintiffs, Delbert O. Stark, et al., and the defendant, Claude R. Wickard, Secretary of Agriculture of the United States, as follows:

1. On application of the plaintiffs under Rule 12(d) of the Federal Rules of Civil Procedure for preliminary hearing the above entitled cause came on for hearing before the Honorable Jesse C. Adkins on May 27, 1942, on the first defense contained in the defendant's answer, and at the conclusion of the said hearing the following statements were made by the Court and counsel:

The Court: Gentlemen, I am unable to distinguish this case from the two decisions of the Circuit Court of Appeals of the United States. [*Wallace v. Gauley*, 68 D. C. Appeals 235, 95 F. (2d) 364; *Massachusetts Farmers Defense Committee v. United States*, 26 F. Supp. 941].* It is true that we are dealing with a

* Appellants' note: *Massachusetts Farmers Defense Committee v. United States*, *supra*, is not a decision of the Circuit Court of Appeals but of the District Court for the Eastern District of Massachusetts (1939).

statute and the original order without this modification, but in both courts they expressly hold that the producers do not have standing in court to challenge the constitutionality of the Act or order.

Now, while the language of the complaint here is confined to challenging the validity of the order as amended, and does not use the word "constitutionality," I think it must be admitted from the discussion we have had that if it is invalid it is also attacked on the constitutional ground.

Mr. Polikoff: Yes. But may I say that does not necessarily follow for this reason: it may be invalid merely because it departs from the language of the statute. That is all we contend.

The Court: Even though you do not call it unconstitutional, I still think under the language of these two cases you have not established your case.

Mr. Polikoff: I have a brief—

The Court (interposing): You may give me a copy of the brief. I do not see how any more argument can prevent me from being controlled by these two decisions.

The only question is whether this case can be distinguished from the cases decided by those two decisions, and I am unable to do it.

So the order will be—I think we had better have some more direct provision than we have here: Recite in the order that it is agreed that this first defense, that this argument is on the first defense.

Mr. Yost: We may refer to it as Mr. Polikoff's motion under Rule 12-D for preliminary hearing.

The Court: You gentlemen agree on that. That will enable you to get the case in the Court of Appeals in the minimum amount of time, and if I am wrong they won't hesitate to correct me.

2. The following parts of the record, proceedings and evidence shall constitute the record on appeal:

- a. The complaint filed on September 22, 1941;
- b. the answer of the Secretary filed March 7, 1942;
- c. final judgment of the District Court entered May 27, 1942, sustaining the first defense set forth in the defendant's answer and dismissing the cause;
- d. notice of appeal from the judgment of May 27, 1942, filed on June 22, 1942;
- e. this stipulation.

3. The designations of the contents of the record heretofore filed by the parties hereto are hereby abandoned and superseded by this stipulation.

WALTER J. BROBYN,
Attorney for Plaintiffs.

HARRY POLIKOFF,
Of Counsel for Plaintiffs.

JOHN S. L. YOST,
Special Assistant to the Attorney General,
Attorney for the Defendant.

August 14, 1942.

UNITED STATES DEPARTMENT OF AGRICULTURE

DIVISION OF MARKETING AND MARKETING AGREEMENTS

**COMPILATION OF AGRICULTURAL
MARKETING AGREEMENT
ACT OF 1937**

**REENACTING, AMENDING, AND
SUPPLEMENTING THE AGRICULTURAL
ADJUSTMENT ACT, AS AMENDED**

**(Including Amendments of the
76th Congress, 1st Session)**



**UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON: 1939**

PREFATORY NOTE

This compilation is intended to indicate the present status of legislation by Congress relating to marketing agreements and orders regulating the handling of agricultural commodities in interstate and foreign commerce. The Agricultural Marketing Agreement Act of 1937, approved June 3, 1937 (Public No. 137—75th Congress—Chap. 296, 1st Session, 7 U. S. C. A. 674, 50 Stat. 249), reenacted and amended certain provisions of the Agricultural Adjustment Act, as amended, relating to marketing agreements and orders. Related legislation enacted prior to June 3, 1937, is given in the compilation known as "Annotated Compilation of the Agricultural Adjustment Act, as Amended, and Acts Relating Thereto at the Close of the First Session of the Seventy-Fourth Congress, August 26, 1935": Superintendent of Documents, Washington, D. C.

Throughout the text of this compilation, bold face type is used for the language of the Agricultural Marketing Agreement Act of 1937; light face type is used for the language of the Agricultural Adjustment Act, as amended, as reenacted by the Agricultural Marketing Agreement Act of 1937; italics are used for amendments made by section 2 of the Agricultural Marketing Agreement Act of 1937 to the Agricultural Adjustment Act, as amended.

The provisions of section 2 of the Agricultural Marketing Agreement Act of 1937 are not set out *haec verba*. They are, however, incorporated in the body of the provisions of the Agricultural Adjustment Act, as amended, which they amend. References to the amendatory provisions of section 2 of the Agricultural Marketing Agreement Act of 1937 are contained in the footnotes. References to recent amendments to the Agricultural Adjustment Act, as amended, and to the Agricultural Marketing Agreement Act of 1937 are contained in the footnotes.

COMPILATION OF AGRICULTURAL MARKETING AGREEMENT ACT OF 1937 REENACTING, AMENDING AND SUPPLEMENT- ING THE AGRICULTURAL ADJUSTMENT ACT, AS AMENDED¹

AN ACT

To reenact and amend provisions of the Agricultural Adjustment Act, as amended, relating to marketing agreements and orders.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the following provisions of the Agricultural Adjustment Act, as amended, not having been intended for the control of the production of agricultural commodities, and having been intended to be effective irrespective of the validity of any other provision of that act are expressly affirmed and validated, and are reenacted without change except as provided in section 2:

(a) Section 1 (relating to the declaration of emergency):

DECLARATION

It is hereby declared that the disruption of the orderly exchange of commodities in interstate commerce impairs the purchasing power of farmers and destroys the value of agricultural assets which support the national credit structure and that these conditions affect transactions in agricultural commodities with a national public interest, and burden and obstruct the normal channels of interstate commerce.²

(b) Section 2 (relating to declaration of policy):

DECLARATION OF POLICY

SEC. 2. It is hereby declared to be the policy of Congress—

(1) Through the exercise of the powers conferred upon the Secretary of Agriculture under this title, to establish and maintain such

¹For annotations to the Agricultural Adjustment Act, as amended; for provisions of that act not reenacted by the provisions of the Agricultural Marketing Agreement Act of 1937; and for other acts of Congress relating both to the Agricultural Adjustment Act, as amended, and to the Agricultural Marketing Agreement Act of 1937 see "Annotated Compilation of Agricultural Adjustment Act as Amended and Acts Relating Thereto at the Close of the First Session of the 74th Congress, August 26, 1935"; Superintendent of Documents, Washington, D. C.

²As amended by sec. 2 (a) of the Agricultural Marketing Agreement Act of 1937. The text of sec. 1 of the Agricultural Adjustment Act, as amended, was as follows:

"DECLARATION OF EMERGENCY

"That the present acute economic emergency being in part the consequence of a severe and increasing disparity between the prices of agricultural and other commodities, which disparity has largely destroyed the purchasing power of farmers for industrial products, has broken down the orderly exchange of commodities, and has seriously impaired the agricultural assets supporting the national credit structure, it is hereby declared that these conditions in the basic industry of agriculture have affected transactions in agricultural commodities with a national public interest, have burdened and obstructed the normal currents of commerce in such commodities, and render imperative the immediate enactment of title I of this Act."

*orderly marketing conditions for agricultural commodities in interstate commerce as will establish*³ prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period; and, in the case of all commodities for which the base period is the pre-war period, August 1909 to July 1914, will also reflect current interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during the base period. The base period in the case of all agricultural commodities except tobacco and potatoes shall be the pre-war period, August 1909-July 1914. In the case of tobacco and potatoes, the base period shall be the postwar period, August 1919-July 1929.

(2) To protect the interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish in subsection (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in subsection (1) of this section.

(c) Section 8a (5), (6), (7), (8), and (9) relating to violations and enforcement;

SEC. 8a(5) Any person willfully exceeding any quota or allotment fixed for him under this title by the Secretary of Agriculture, and any other person knowingly participating, or aiding, in the exceeding of said quota or allotment, shall forfeit to the United States a sum equal to three times the current market value of such excess, which forfeiture shall be recoverable in a civil suit brought in the name of the United States.

(6) The several district courts of the United States are hereby vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating⁴ any order, regulation, or agreement, heretofore or hereafter made or issued pursuant to this title, in any proceeding now pending or hereafter brought in said courts.

(7) Upon the request of the Secretary of Agriculture, it shall be the duty of the several district attorneys of the United States, in their respective districts, under the directions of the Attorney General, to institute proceedings to enforce the remedies and to collect the forfeitures provided for in, or pursuant to, this title. Whenever the Secretary, or such officer or employee of the Department of Agriculture as he may designate for the purpose, has reason to believe that any handler has violated, or is violating, the provisions of any order or amendment thereto issued pursuant to this title, the Secretary shall have power to institute an investigation and, after due notice to such handler, to conduct a hearing in order to deter-

³ The italicized words were substituted, by sec. 2 (b) of the Agricultural Marketing Agreement Act of 1937, in lieu of the words: "balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will establish".

⁴ The following was deleted by section 2 (c) of the Agricultural Marketing Agreement Act of 1937: "the provisions of this section, or of".

mine the facts for the purpose of referring the matter to the Attorney General for appropriate action.

(8) The remedies provided for in this section shall be in addition to, and not exclusive of, any of the remedies or penalties provided for elsewhere in this title or now or hereafter existing at law or in equity.

(9) The term "person" as used in this title includes an individual, partnership, corporation, association, and any other business unit.

(d) Section 8b (relating to marketing agreements):

SEC. 8b. In order to effectuate the declared policy of this title, the Secretary of Agriculture shall have the power, after due notice and opportunity for hearing, to enter into marketing agreements with processors, producers, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof, only with respect to such handling as is in the current of interstate or foreign commerce or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof. The making of any such agreement shall not be held to be in violation of any of the antitrust laws of the United States, and any such agreement shall be deemed to be lawful: Provided, That no such agreement shall remain in force after the terminations of this Act. For the purpose of carrying out any such agreement the parties thereto shall be eligible for loans from the Reconstruction Finance Corporation under section 5 of the Reconstruction Finance Corporation Act. Such loans shall not be in excess of such amounts as may be authorized by the agreements.

(e) Section 8c (relating to orders):

ORDERS

SEC. 8c. (1) The Secretary of Agriculture shall, subject to the provisions of this section, issue, and from time to time amend, orders applicable to processors, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of this section. Such persons are referred to in this title as "handlers." Such orders shall regulate, in the manner hereinafter in this section provided, only such handling of such agricultural commodity, or product thereof, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof.

COMMODITIES TO WHICH APPLICABLE

(2) Orders issued pursuant to this section shall be applicable only to the following agricultural commodities and the products thereof (except products of naval stores and the products of honeybees),⁵ or to any regional, or market classification of any such commodity or product: Milk, fruits (including pecans and walnuts but not including apples, other than apples produced in the States of Washington, Ore-

⁵The words "and the products of honeybees" were inserted by public, No. 246, 75th Congress, Chapter 567, 1st session, approved August 5, 1937.

gon, and Idaho," and not including fruits, other than olives, for canning), tobacco, vegetables (not including vegetables, other than asparagus, for canning), soybeans, hops,⁷ honeybees,⁸ and naval stores as included in the Naval Stores Act and standards established thereunder (including refined or partially refined oleoresin).

NOTICE AND HEARING

(3) Whenever the Secretary of Agriculture has reason to believe that the issuance of an order will tend to effectuate the declared policy of this title with respect to any commodity or product thereof specified in subsection (2) of this section, he shall give due notice of and an opportunity for a hearing upon a proposed order.

FINDING AND ISSUANCE OF ORDER

(4) After such notice and opportunity for hearing, the Secretary of Agriculture shall issue an order if he finds, and sets forth in such order, upon the evidence introduced at such hearing (in addition to such other findings as may be specifically required by this section) that the issuance of such order and all of the terms and conditions thereof will tend to effectuate the declared policy of this title with respect to such commodity.

TERMS—MILK AND ITS PRODUCTS

(5) In the case of milk and its products, orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7)) no others:

(A) Classifying milk in accordance with the form in which or the purpose for which it is used, and fixing, or providing a method for fixing, minimum prices for each such use classification which all handlers shall pay, and the time when payments shall be made, for milk purchased from producers or associations of producers. Such prices shall be uniform as to all handlers, subject only to adjustments for (1) volume, market, and production differentials customarily applied by the handlers subject to such order, (2) the grade or quality of the milk purchased, and (3) the locations at which delivery of such milk, or any use classification thereof, is made to such handlers.

(B) Providing:

(i) for the payment to all producers and associations of producers delivering milk to the same handler of uniform prices for all milk delivered by them; Provided, That, except in the

⁶ The words "other than apples produced in the States of Washington, Oregon, and Idaho," were added by Public, No. 98, 76th Congress, Chapter 157, 1st session, approved May 31, 1939.

⁷ The word "hops," was inserted by and the following provision was contained in Public, No. 482, 75th Congress, Chapter 143, 3d session, approved April 13, 1938:

"SEC. 3. No order issued pursuant to section 8c of the Agricultural Adjustment Act, as amended, shall be applicable to hops except during the two crop years next succeeding the date of enactment of this Act."

The provision quoted was amended by Public, No. 91, 76th Congress, Chapter 150, 1st session, approved May 26, 1939, to read as follows:

"SEC. 3. No orders issued pursuant to section 8c of the Agricultural Adjustment Act, as amended, shall be applicable to hops after September 1, 1942."

⁸ The word "honeybees," was inserted by Public, No. 246, 75th Congress, Chapter 567, 1st session, approved August 5, 1937.

case of orders covering milk products only, such provision is approved or favored by at least three-fourth of the producers who, during a representative period determined by the Secretary of Agriculture, have been engaged in the production for market of milk covered in such order or by producers who, during such representative period, have produced at least three-fourths of the volume of such milk produced for market during such period; the approval required hereunder shall be separate and apart from any other approval or disapproval provided for by this section; or

(ii) for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered;

subject, in either case, only to adjustments for (a) volume, market, and production differentials customarily applied by the handlers subject to such order, (b) the grade or quality of the milk delivered, (c) the locations at which delivery of such milk is made, and (d) a further adjustment, equitably to apportion the total value of the milk purchased by any handler, or by all handlers, among producers and associations of producers, on the basis of their *marketings*⁹ of milk during a representative period of time.

(C) In order to accomplish the purposes set forth in paragraphs (A) and (B) of this subsection (5), providing a method for making adjustments in payments, as among handlers (including producers who are also handlers), to the end that the total sums paid by each handler shall equal the value of the milk purchased by him at the prices fixed in accordance with paragraph (A) hereof.

(D) Providing that, in the case of all milk purchased by handlers from any producer who did not regularly sell milk during a period of 30 days next preceding the effective date of such order for consumption in the area covered thereby, payments to such producer, for the period beginning with the first regular delivery by such producer and continuing until the end of two full calendar months following the first day of the next succeeding calendar month, shall be made at the price for the lowest use classification specified in such order, subject to the adjustments specified in paragraph (B) of this subsection (5).

(E) Providing (i) except as to producers for whom such services are being rendered by a cooperative marketing association, qualified as provided in paragraph (F) of this subsection (5), for market information to producers and for the verification of weights, sampling, and testing of milk purchased from producers, and for making appropriate deductions therefor from payments to producers, and (ii) for assurance of, and security for, the payment by handlers for milk purchased.

(F) Nothing contained in this subsection (5) is intended or shall be construed to prevent a cooperative marketing association qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act," engaged in making

⁹The word "production" was deleted and the word "marketings" was substituted by section 2 (d) of the Agricultural Marketing Agreement Act of 1937.

collective sales or marketing of milk or its products for the producers thereof, from blending the net proceeds of all its sales in all markets in all use classifications, and making distribution thereof to its producers in accordance with the contract between the association and its producers: Provided, That it shall not sell milk or its products to any handler for use or consumption in any market at prices less than the prices fixed pursuant to paragraph (A) of this subsection (5) for such milk.

(G) No marketing agreement or order applicable to milk and its products in any marketing area shall prohibit or in any manner limit, in the case of the products of milk, the marketing in that area of any milk or product thereof produced in any production area in the United States.

TERMS—OTHER COMMODITIES

(6) In the case of fruits (including pecans and walnuts but not including apples, *other than apples produced in the States of Washington, Oregon, and Idaho*,¹⁰ and not including fruits, other than olives, for canning) and their products, tobacco and its products, vegetables (not including vegetables, other than asparagus, for canning) and their products, soybeans and their products, *hops*,¹¹ *honeybees*,¹² and naval stores as included in the Naval Stores Act and standards established thereunder (including refined or partially refined oleoresin), orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7)) no others:

(A) Limiting, or providing methods for the limitation of, the total quantity of any such commodity or product, or of any grade, size, or quality thereof, produced during any specified period or periods; which may be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods by all handlers thereof.

(B) Allotting, or providing methods for allotting, the amount of such commodity or product, or any grade, size, or quality thereof, which each handler may purchase from or handle on behalf of any and all producers thereof, during any specified period or periods, under a uniform rule based upon the amounts¹³ sold by such producers in such prior period as the Secretary determines to be representative, or upon the current *quantities available for sale by*¹⁴ such producers, or both, to the end that the total quantity thereof to be purchased, or handled during any specified period or periods shall be apportioned equitably among producers.

(C) Allotting, or providing methods for allotting, the amount of any such commodity or product, or any grade, size, or quality thereof, which each handler may market in or transport to any or all markets

¹⁰ Public, No. 98, 76th Congress, Chapter 157, 1st session, approved May 31, 1939.

¹¹ Public, No. 482, 75th Congress, Chapter 143, 3d session, approved April 13, 1938.

¹² Public, No. 246, 75th Congress, Chapter 567, 1st session, approved August 5, 1937.

¹³ The words "produced or" were deleted by section 2 (e) of the Agricultural Marketing Agreement Act of 1937.

¹⁴ The italicized words were substituted by section 2 (e) of the Agricultural Marketing Agreement Act of 1937, in lieu of the words: "production or sales of".

in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, under a uniform rule based upon the amounts which each such handler has available for current shipment, or upon the amounts shipped by each such handler in such prior period as the Secretary determines to be representative, or both, to the end that the total quantity of such commodity or product, or any grade, size, or quality thereof, to be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods shall be equitably apportioned among all of the handlers thereof.

(D) Determining, or providing methods for determining, the existence and extent of the surplus of any such commodity or product, or of any grade, size, or quality thereof, and providing for the control and disposition of such surplus, and for equalizing the burden of such surplus elimination or control among the producers and handlers thereof.

(E) Establishing, or providing for the establishment of, reserve pools of any such commodity or product, or of any grade, size, or quality thereof, and providing for the equitable distribution of the net return derived from the sale thereof among the persons beneficially interested therein.

TERMS COMMON TO ALL ORDERS

(7) In the case of the agricultural commodities and the products thereof specified in subsection (2) orders shall contain one or more of the following terms and conditions:

(A) Prohibiting unfair methods of competition and unfair trade practices in the handling thereof.

(B) Providing that (except for milk and cream to be sold for consumption in fluid form) such commodity or product thereof, or any grade, size, or quality thereof shall be sold by the handlers thereof only at prices filed by such handlers in the manner provided in such order.

(C) Providing for the selection by the Secretary of Agriculture, or a method for the selection, of an agency or agencies and defining their power and duties, which shall include only the powers:

(i) To administer such order in accordance with its terms and provisions;

(ii) To make rules and regulations to effectuate the terms and provisions of such order;

(iii) To receive, investigate, and report to the Secretary of Agriculture complaints of violations of such order; and

(iv) To recommend to the Secretary of Agriculture amendments to such order.

No person acting as a member of an agency established pursuant to this paragraph (C) shall be deemed to be acting in an official capacity, within the meaning of section 10 (g) of this title, unless such person receives compensation for his personal services from funds of the United States.

(D) Incidental to, and not inconsistent with, the terms and conditions specified in subsections (5), (6), and (7) and necessary to effectuate the other provisions of such order.

ORDERS WITH MARKETING AGREEMENT

(8) Except as provided in subsection (9) of this section, no order issued pursuant to this section shall become effective until the handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of not less than 50 per centum of the volume of the commodity or product thereof covered by such order which is produced or marketed within the production or marketing area defined in such order have signed a marketing agreement, entered into pursuant to section 8b of this title, which regulates the handling of such commodity or product in the same manner as such order, except that as to citrus fruits produced in any area producing what is known as California citrus fruits no order issued pursuant to this subsection (8) shall become effective until the handlers of not less than 80 per centum of the volume of such commodity or product thereof covered by such order have signed such a marketing agreement: Provided, That no order issued pursuant to this subsection shall be effective unless the Secretary of Agriculture determines that the issuance of such order is approved or favored:

(A) By at least two-thirds of the producers who (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers), during a representative period determined by the Secretary, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of such commodity for sale in the marketing area specified in such marketing agreement, or order, or

(B) By producers who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume of such commodity sold within the marketing area specified in such marketing agreement or order.

ORDERS WITH OR WITHOUT MARKETING AGREEMENT

(9) Any order issued pursuant to this section shall become effective in the event that, notwithstanding the refusal or failure of handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said per centum shall be 80 per centum) covered by such order which is produced or marketed within the production or marketing area defined in such order to sign a marketing agreement relating

to such commodity or product thereof, on which a hearing has been held, the Secretary of Agriculture, with the approval of the President, determines:

(A) That the refusal or failure to sign a marketing agreement (upon which a hearing has been held) by the handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said per centum shall be 80 per centum) specified therein which is produced or marketed within the production or marketing area specified therein tends to prevent the effectuation of the declared policy of this title with respect to such commodity or product, and

(B) That the issuance of such order is the only practical means of advancing the interests of the producers of such commodity pursuant to the declared policy, and is approved or favored:

(i) By at least two-thirds of the producers (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers) who, during a representative period determined by the Secretary, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of such commodity for sale in the marketing area specified in such marketing agreement, or order, or

(ii) By producers who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume of such commodity sold within the marketing area specified in such marketing agreement or order.

MANNER OF REGULATION AND APPLICABILITY

(10) No order shall be issued under this section unless it regulates the handling of the commodity or product covered thereby in the same manner as, and is made applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held. No order shall be issued under this title prohibiting, regulating, or restricting the advertising of any commodity or product covered thereby, nor shall any marketing agreement contain any provision prohibiting, regulating, or restricting the advertising of any commodity or product covered by such marketing agreement.

REGIONAL APPLICATION

(11) (A) No order shall be issued under this section which is applicable to all production areas or marketing areas, or both, of any commodity or product thereof unless the Secretary finds that the issuance of several orders applicable to the respective regional pro-

duction areas or regional marketing areas, or both, as the case may be, of the commodity or product would not effectively carry out the declared policy of this title.

(B) Except in the case of milk and its products, orders issued under this section shall be limited in their application to the smallest regional production areas or regional marketing areas, or both, as the case may be, which the Secretary finds practicable, consistently with carrying out such declared policy.

(C) All orders issued under this section which are applicable to the same commodity or product thereof shall, so far as practicable, prescribe such different terms, applicable to different production areas and marketing areas, as the Secretary finds necessary to give due recognition to the differences in production and marketing of such commodity or product in such areas.

COOPERATIVE ASSOCIATION REPRESENTATION

(12) Whenever, pursuant to the provisions of this section, the Secretary is required to determine the approval or disapproval of producers with respect to the issuance of any order, or any term or condition thereof, or the termination thereof, the Secretary shall consider the approval or disapproval by any cooperative association of producers, bona fide engaged in marketing the commodity or product thereof covered by such order, or in rendering services for or advancing the interests of the producers of such commodity, as the approval or disapproval of the producers who are members of, stockholders in, or under contract with, such cooperative association of producers.

RETAILER AND PRODUCER EXEMPTION

(13) (A) No order issued under subsection (9) of this section shall be applicable to any person who sells agricultural commodities or products thereof at retail in his capacity as such retailer, except to a retailer in his capacity as a retailer of milk and its products.

(B) No order issued under this title shall be applicable to any producer in his capacity as a producer.

VIOLATION OF ORDER

(14) Any handler subject to an order issued under this section, or any officer, director, agent, or employee of such handler, who violates any provision of such order (other than a provision calling for payment of a pro rata share of expenses) shall, on conviction, be fined not less than \$50 or more than \$500 for each such violation, and each day during which such violation continues shall be deemed a separate violation: Provided, That if the court finds that a petition pursuant to subsection (15) of this section was filed and prosecuted by the defendant in good faith and not for delay, no penalty shall be imposed under this subsection for such violations as occurred between the date upon which the defendant's petition was filed with the Secretary, and the date upon which notice of the Secretary's ruling thereon was given to the defendant in accordance with regulations prescribed pursuant to subsection (15).

PETITION BY HANDLER AND REVIEW

(15) (A) Any handler subject to an order may file a written petition with the Secretary of Agriculture, stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary of Agriculture, with the approval of the President. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

(B) The District Courts of the United States (including the Supreme Court of the District of Columbia) in any district in which such handler is an inhabitant, or has his principal place of business, are hereby vested with jurisdiction in equity to review such ruling, provided a bill in equity for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to him a copy of the bill of complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subsection (15) shall not impede, hinder, or delay the United States or the Secretary of Agriculture from obtaining relief pursuant to section 8a (6) of this title. Any proceedings brought pursuant to section 8a (6) of this title (except where brought by way of counterclaim in proceedings instituted pursuant to this subsection (15)) shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this subsection (15).

TERMINATION OF ORDERS AND MARKETING AGREEMENTS

(16) (A) The Secretary of Agriculture shall, whenever he finds that any order issued under this section, or any provision thereof, obstructs or does not tend to effectuate the declared policy of this title, terminate or suspend the operation of such order or such provision thereof.

(B) The Secretary shall terminate any marketing agreement entered into under section 8b, or order issued under this section, at the end of the then current marketing period for such commodity, specified in such marketing agreement or order, whenever he finds that such termination is favored by a majority of the producers who, during a representative period determined by the Secretary, have been engaged in the production for market of the commodity specified in such marketing agreement or order, within the production area specified in such marketing agreement or order, or who, during such representative period, have been engaged in the production of such commodity for sale within the marketing area specified in such marketing agreement or order: Provided, That such majority have,

during such representative period, produced for market more than 50 per centum of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or have, during such representative period, produced more than 50 per centum of the volume of such commodity sold in the marketing area specified in such marketing agreement or order, but such termination shall be effective only if announced on or before such date (prior to the end of the then current marketing period) as may be specified in such marketing agreement or order.

(C) The termination or suspension of any order or amendment thereto or provision thereof, shall not be considered an order within the meaning of this section.

PROVISIONS APPLICABLE TO AMENDMENTS

(17) The provisions of this section, section 8d, and section 8e applicable to orders shall be applicable to amendments to orders: Provided, That notice of a hearing upon a proposed amendment to any order issued pursuant to section 8c, given not less than three days prior to the date fixed for such hearing, shall be deemed due notice thereof.

Milk Prices

(18) *The Secretary of Agriculture, prior to prescribing any term in any marketing agreement or order, or amendment thereto, relating to milk or its products, if such term is to fix minimum prices to be paid to producers or associations of producers, or prior to modifying the price fixed in any such term, shall ascertain, in accordance with section 2 and section 8c, the prices that will give such commodities a purchasing power equivalent to their purchasing power during the base period. The level of prices which it is declared to be the policy of Congress to establish in section 2 and section 8c shall, for the purposes of such agreement, order, or amendment, be such level as will reflect the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand, for milk or its products in the marketing area to which the contemplated marketing agreement, order, or amendment relates. Whenever the Secretary finds, upon the basis of the evidence adduced at the hearing required by section 8b or 8c, as the case may be, that the prices that will give such commodities a purchasing power equivalent to their purchasing power during the base period as determined pursuant to section 2 and section 8c are not reasonable in view of the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand for milk and its products in the marketing area to which the contemplated agreement, order, or amendment relates, he shall fix such prices as he finds will reflect such factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest. Thereafter, as the Secretary finds necessary on account of changed circumstances, he shall, after due notice and opportunity for hearing, make adjustments in such prices.¹⁵*

¹⁵ This italicized subsection was added by sec. 2 (f) of the Agricultural-Marketing Agreement Act of 1937.

PRODUCER REFERENDUM

(19) *For the purpose of ascertaining whether the issuance of an order is approved or favored by producers, as required under the applicable provisions of this title, the Secretary may conduct a referendum among producers. The requirements of approval or favor under any such provision shall be held to be complied with if, of the total number of producers, or the total volume of production, as the case may be, represented in such referendum, the percentage approving or favoring is equal to or in excess of the percentage required under such provision. Nothing in this subsection shall be construed as limiting representation by cooperative associations as provided in subsection (12).¹⁸*

(f) Section 8d (relating to books and records);

BOOKS AND RECORDS

SEC. 8d. (1) All parties to any marketing agreement, and all handlers subject to an order, shall severally, from time to time, upon the request of the Secretary, to furnish him with such information as he finds to be necessary to enable him to ascertain and determine the extent to which such agreement or order has been carried out or has effectuated the declared policy of this title, and with such information as he finds to be necessary to determine whether or not there has been any abuse of the privilege of exemptions from the anti-trust laws. Such information shall be furnished in accordance with forms of reports to be prescribed by the Secretary. For the purpose of ascertaining the correctness of any report made to the Secretary pursuant to this subsection, or for the purpose of obtaining the information required in any such report, where it has been requested and has not been furnished, the Secretary is hereby authorized to examine such books, papers, records, copies of income-tax reports, accounts, correspondence, contracts, documents, or memoranda, as he deems relevant and which are within the control (1) of any such party to such marketing agreement, or any such handler, from whom such report was requested or (2) of any person having, either directly or indirectly, actual or legal control of or over such party or such handler or (3) of any subsidiary of any such party, handler, or person.

(2) Notwithstanding the provisions of section 7, all information furnished to or acquired by the Secretary of Agriculture pursuant to this section shall be kept confidential by all officers and employees of the Department of Agriculture and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary of Agriculture, or to which he or any officer of the United States is a party, and involving the marketing agreement or order with reference to which the information so to be disclosed was furnished or acquired. Nothing in this section shall be deemed to prohibit (A) the issuance of general statements based upon the reports of a num-

¹⁸ This italicized subsection was added by sec. 2 (f) of the Agricultural Marketing Agreement act of 1937.

ber of parties to a marketing agreement or of handlers subject to an order, which statements do not identify the information furnished by any person, or (B) the publication by direction of the Secretary, of the name of any person violating any marketing agreement or any order, together with a statement of the particular provisions of the marketing agreement or order violated by such person. Any such officer or employee violating the provisions of this section shall upon conviction be subject to a fine of not more than \$1,000 or to imprisonment for not more than one year, or to both, and shall be removed from office.

(g) Section 8e (relating to determination of base period);

DETERMINATION OF BASE PERIOD

SEC. 8e. In connection with the making of any marketing agreement or the issuance of any order, if the Secretary finds and proclaims that, as to any commodity specified in such marketing agreement or order, the purchasing power during the base period specified for such commodity in section 2 of this title cannot be satisfactorily determined from available statistics of the Department of Agriculture, the base period, for the purposes of such marketing agreement or order, shall be the post-war period, August 1919-July 1929, or all that portion thereof for which the Secretary finds and proclaims that the purchasing power of such commodity can be satisfactorily determined from available statistics of the Department of Agriculture.

(h) Section 10 (a), (b) (2), (c), (f), (g), (h), and (i) (miscellaneous provisions);

MISCELLANEOUS

SEC. 10. (a) The Secretary of Agriculture may appoint such officers and employees, subject to the provisions of the Classification Act of 1923 and Acts amendatory thereof, and such experts as are necessary to execute the functions vested in him by this title; and the Secretary may make such appointments without regard to the civil service laws or regulations: Provided, That no salary in excess of \$10,000 per annum shall be paid to any officer, employee, or expert of the Agricultural Adjustment Administration, which the Secretary shall establish in the Department of Agriculture for the administration of the functions vested in him by this title: And provided further, That the State Administrator appointed to administer this Act in each State shall be appointed by the President, by and with the advice and consent of the Senate. Title II of the Act entitled "An Act to maintain the credit of the United States Government", approved March 20, 1933, to the extent that it provides for the impoundment of appropriations on account of reductions in compensation, shall not operate to require such impoundment under appropriations contained in this Act.

(b) (2)¹⁷ Each order issued by the Secretary under this title shall provide that each handler subject thereto shall pay to any authority

¹⁷ Sec. 10 (b) (2) of the Agricultural Adjustment Act, as amended.

or agency established under such order such handler's pro rata share (as approved by the Secretary) of such expenses as the Secretary may find will necessarily be incurred by such authority or agency, during any period specified by him, for the maintenance and functioning of such authority or agency, other than expenses incurred in receiving, handling, holding, or disposing of any quantity of a commodity received, handled, held, or disposed of by such authority or agency for the benefit or account of persons other than handlers subject to such order. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the agricultural commodity or product thereof covered by such order which is distributed, processed, or shipped by such cooperative association of producers. Any such authority or agency may maintain in its own name, or in the names of its members, a suit against any handler subject to an order for the collection of such handler's pro rata share of expenses. The several District Courts of the United States are hereby vested with jurisdiction to entertain such suits regardless of the amount in controversy.

(c) The Secretary of Agriculture is authorized, with the approval of the President, to make such regulations with the force and effect of law as may be necessary to carry out the powers vested in him by this title.¹⁸ Any violation of any regulation shall be subject to such penalty, not in excess of \$100, as may be provided therein.

(f) The provisions of this title shall be applicable to the United States and its possessions, except the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam; except that, in the case of sugar beets and sugarcane, the President, if he finds it necessary in order to effectuate the declared policy of this Act, is authorized by proclamation to make the provisions of this title applicable to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and/or the island of Guam.¹⁹

(g) No person shall, while acting in any official capacity in the administration of this title, speculate, directly or indirectly, in any agricultural commodity or product thereof, to which this title applies, or in contracts relating thereto, or in the stock or membership interests of any association or corporation engaged in handling, processing, or disposing of any such commodity or product. Any person violating this subsection shall upon conviction thereof be fined not more than \$10,000 or imprisoned not more than two years, or both.

(h) For the efficient administration of the provisions of part 2 of this title, the provisions, including penalties, of sections 8, 9, and 10 of the Federal Trade Commission Act, approved September 26, 1914, are made applicable to the jurisdiction, powers, and duties of the Secretary in administering the provisions of this title and to any

¹⁸ Sec. 2 (g) of the Agricultural Marketing Agreement Act of 1937 deletes the following: "including regulations establishing conversion factors for any commodity and article processed therefrom to determine the amount of tax imposed or refunds to be made with respect thereto".

¹⁹ Sec. 2 (h) of the Agricultural Marketing Agreement Act of 1937 deletes the sentence: "The President is authorized to attach by Executive order any or all such possessions to any internal-revenue collection district for the purpose of carrying out the provisions of this title with respect to the collection of taxes".

person subject to the provisions of this title, whether or not a corporation. Hearings authorized or required under this title shall be conducted by the Secretary of Agriculture or such officer or employee of the Department as he may designate for the purpose. The Secretary may report any violation of any agreement entered into under part 2 of this title to the Attorney General of the United States, who shall cause appropriate proceedings to enforce such agreement to be commenced and prosecuted in the proper courts of the United States without delay.

(i) The Secretary of Agriculture upon the request of the duly constituted authorities of any State is directed, in order to effectuate the declared policy of this title and in order to obtain uniformity in the formulation, administration, and enforcement of Federal and State programs relating to the regulation of the handling of agricultural commodities or products thereof, to confer with and hold joint hearings with the duly constituted authorities of any State, and is authorized to cooperate with such authorities; to accept and utilize, with the consent of the State, such State and local officers and employees as may be necessary; to avail himself of the records and facilities of such authorities; to issue orders (subject to the provisions of section 8c) complementary to orders or other regulations issued by such authorities; and to make available to such State authorities the records and facilities of the Department of Agriculture: Provided, That information furnished to the Secretary of Agriculture pursuant to section 8d (1) hereof shall be made available only to the extent that such information is relevant to transactions within the regulatory jurisdiction of such authorities, and then only upon a written agreement by such authorities that the information so furnished shall be kept confidential by them in a manner similar to that required of Federal officers and employees under the provisions of section 8d (2) hereof.

(j) *The term "interstate or foreign commerce" means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession, or the District of Columbia. For the purpose of this Act (but in nowise limiting the foregoing definition) a marketing transaction in respect to an agricultural commodity or the product thereof shall be considered in interstate or foreign commerce if such commodity or product is part of that current of interstate or foreign commerce usual in the handling of the commodity or product whereby they, or either of them, are sent from one State to end their transit, after purchase, in another, including all cases where purchase or sale is either for shipment to another State or for the processing within the State and the shipment outside the State of the product so processed. Agricultural commodities or products thereof normally in such current of interstate or foreign commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act. As used herein, the word "State" includes*

Territory, the District of Columbia, possession of the United States, and foreign nations.²⁰

(i) Section 12 (a) and (c) (relating to appropriation and expense);

APPROPRIATION

SEC. 12. (a) There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$100,000,000 to be available to the Secretary of Agriculture for administrative expenses under this title and for payments authorized to be made under section 8. Such sum shall remain available until expended.

To enable the Secretary of Agriculture to finance, under such terms and conditions as he may prescribe, surplus reductions²¹ with respect to the dairy- and beef-cattle industries, and to carry out any of the purposes described in subsections (a) and (b) of this section (12) and to support and balance the market for the dairy and beef cattle industries, there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$200,000,000; Provided, That not more than 60 per centum of such amount shall be used for either of such industries.

(c) The administrative expenses provided for under this section shall include, among others, expenditures for personal services and rent in the District of Columbia and elsewhere, for law books and book of reference, for contract stenographic reporting services, and for printing and paper in addition to allotments under the existing law. The Secretary of Agriculture shall transfer to the Treasury Department, and is authorized to transfer to other agencies, out of funds available for administrative expenses under this title, such sums as are required to pay administrative expenses incurred and refunds made by such department or agencies in the administration of this title.

(j) Section 14 (relating to separability);

SEPARABILITY OF PROVISIONS

SEC. 14. If any provision of this title is declared unconstitutional, or the applicability thereof to any person, circumstance, or commodity is held invalid the validity of the remainder of this title and the applicability thereof to other persons, circumstances, or commodities shall not be affected thereby.

(k) Section 22 (relating to imports);

IMPORTS

SEC. 22 (a) Whenever the President has reason to believe that any one or more articles are being imported into the United States under such conditions and in sufficient quantities as to render or tend

²⁰ This italicized subsection was added by sec. 2 (i) of the Agricultural Marketing Agreement Act of 1937.

²¹ Sec. 2 (j) of the Agricultural Marketing Agreement Act of 1937 deletes the words: "and production adjustments".

to render ineffective or materially interfere with any program or operation undertaken, or to reduce substantially the amount of any product processed in the United States from any commodity subject to and with respect to which any program is in operation, under this title, or the Soil Conservation and Domestic Allotment Act, as amended, he shall cause an immediate investigation to be made by the United States Tariff Commission, which shall give precedence to investigations under this section to determine such facts. Such investigation shall be made after due notice and opportunity for hearing to interested parties and shall be conducted subject to such regulations as the President shall specify.

(b) If, on the basis of such investigation and report to him of findings and recommendations made in connection therewith, the President finds the existence of such facts, he shall by proclamation impose such limitations on the total quantities of any article or articles which may be imported as he finds and declares shown by such investigation to be necessary to prescribe in order that the entry of such article or articles will not render or tend to render ineffective or materially interfere with any program or operation undertaken, or will not reduce substantially the amount of any product processed in the United States from any commodity subject to and with respect to which any program is in operation, under this title or the Soil Conservation and Domestic Allotment Act, as amended: Provided, That no limitation shall be imposed on the total quantity of any article which may be imported from any country which reduces such permissible total quantity to less than 50 per centum of the average annual quantity of such article which was imported from such country during the period from July 1, 1928, to June 30, 1933, both dates inclusive.

(c) No import restriction proclaimed by the President under this section nor any revocation, suspension, or modification thereof shall become effective until fifteen days after the date of such proclamation, revocation, suspension, or modification.

(d) Any decision of the President as to facts under this section shall be final.

(e) After investigation, report, finding, and declaration in the manner provided in the case of a proclamation issued pursuant to subsection (b) of this section, any proclamation or provision of such proclamation may be suspended by the President whenever he finds that the circumstances requiring the proclamation or provision thereof no longer exists, or may be modified by the President whenever he finds that changed circumstances require such modification to carry out the purposes of this section.²²

Sec. 2. The following provisions, reenacted in section 1 of this act, are amended as follows: ²³

Sec. 3. (a) The Secretary of Agriculture, or such officer or employee of the Department of Agriculture as may be designated

²² Sec. 5 of Public, No. 461, 74th Cong., approved February 29, 1936, amended sec. 22 of the Agricultural Adjustment Act, as amended, by inserting after the words "this title" wherever they appeared, the words "or the Soil Conservation and Domestic Allotment Act, as amended,"; and by deleting the words "an adjustment" whenever they appeared, and inserting in lieu thereof the word "any."

²³ Subsections (a) to (j) inclusive, of section 2 of the Agricultural Marketing Agreement Act of 1937 are incorporated in the preceding text and in the footnotes.

by him, upon written application of any cooperative association, incorporated or otherwise, which is in good faith owned or controlled by producers or organizations thereof, of milk or its products, and which is bona fide engaged in collective processing or preparing for market or handling or marketing (in the current of interstate or foreign commerce, as defined by paragraph (i) of section 2 of this act), milk or its products, may mediate and, with the consent of all parties, shall arbitrate if the Secretary has reason to believe that the declared policy of the Agricultural Adjustment Act, as amended, would be effectuated thereby, bona fide disputes, between such associations and the purchasers or handlers or processors or distributors of milk or its products, as to terms and conditions of the sale of milk or its products. The power to arbitrate under this section shall apply only to such subjects of the term or condition in dispute as could be regulated under the provisions of the Agricultural Adjustment Act, as amended, relating to orders for milk and its products.

(b) Meetings held pursuant to this section shall be conducted subject to such rules and regulations as the Secretary may prescribe.

(c) No award or agreement resulting from any such arbitration or mediation shall be effective unless and until approved by the Secretary of Agriculture, or such officer or employee of the Department of Agriculture as may be designated by him, and shall not be approved if it permits any unlawful trade practice or any unfair method of competition.

(d) No meeting so held and no award or agreement so approved shall be deemed to be in violation of any of the antitrust laws of the United States.

Sec. 4. Nothing in this act shall be construed as invalidating any marketing agreement, license, or order, or any regulation relating to, or any provision of, or any act of the Secretary of Agriculture in connection with, any such agreement, license, or order which has been executed, issued, approved, or done under the Agricultural Adjustment Act, or any amendment thereof, but such marketing agreements, licenses, orders, regulations, provisions, and acts are hereby expressly ratified, legalized, and confirmed.

Sec. 5. No processing taxes or compensating taxes shall be levied or collected under the Agricultural Adjustment Act, as amended. Except as provided in the preceding sentence, nothing in this act shall be construed as affecting provisions of the Agricultural Adjustment Act, as amended, other than those enumerated in section 1. The provisions so enumerated shall apply in accordance with their terms (as amended by this act) to the provisions of the Agricultural Adjustment Act, this act, and other provisions of law to which they have been heretofore made applicable.

Sec. 6. This act may be cited as the "Agricultural Marketing Agreement Act of 1937."

UNITED STATES DEPARTMENT OF AGRICULTURE

SURPLUS MARKETING ADMINISTRATION

T. 7, CH. IX, CODE OF FED. REGS.

MARKETING ORDERS—PART 904

ORDER, AS AMENDED, REGULATING THE HANDLING OF MILK IN THE
GREATER BOSTON, MASSACHUSETTS, MARKETING AREA¹

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The Secretary of Agriculture pursuant to the powers conferred upon the Secretary by Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, issued, effective February 4, 1940, an order, as amended, regulating the handling of milk in the Greater Boston, Massachusetts, marketing area.

There being reason to believe that amendments to said order, as amended, would tend to effectuate the declared policy of the act, notice was given on the 3d day of October 1940, of a public hearing which was held at Montpelier, Vermont, on the 14th day of October 1940; at Augusta, Maine, on the 16th day of October 1940; and at Boston, Massachusetts, on the 17th day of October 1940, and notice was given on the 8th day of May 1941 of a reopening of said hearing, which was held at Montpelier, Vermont, on the 14th day of May 1941, and at Boston, Massachusetts, on the 15th day of May 1941, at which times and places all interested parties were afforded an opportunity to be heard on proposed amendments to the order, as amended.

The requirements of section 8c (9) of the act have been complied with.

SECTION 904.0 Findings. The Secretary finds, upon the evidence introduced at the last above-mentioned hearings, said findings being in addition to the findings made upon the evidence introduced at the original hearings on said order, and on amendments to said order, and being in addition to the other findings and determinations made prior to or at the time of the original issuance of said order, and of amendments thereto (which findings are hereby ratified and

¹ Section 904.0 to and including Sec. 904.11 issued under the authority contained in 48 Stat. 31 (1933), 7 U. S. C. § 601 et seq. (1934); 49 Stat. 750 (1935); 50 Stat. 246 (1937); 7 U. S. C. 601 et seq. (Supp. IV 1938).

affirmed save only as such findings are in conflict with the findings hereinafter set forth):

1. That the prices calculated to give milk produced for sale in said marketing area a purchasing power equivalent to the purchasing power of such milk, as determined pursuant to sections 2 and 8 (e) of said act, are not reasonable in view of the price of feeds, the available supplies of feeds, and other economic conditions which affect the market supply and demand for such milk, and that the minimum prices fixed in this order, as amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

2. That the provisions relating to producer-handlers exempt from the regulation of the order, as amended, only such persons as are producers handling milk of their own production;

3. That the provisions relating to the payments out of the equalization pool to cooperative associations performing certain marketing services are incidental to, not inconsistent with, the other provisions of the order, as amended, and necessary to effectuate the other provisions of the order, as amended;

4. That all the remaining provisions of the order, as amended, are necessary to effectuate the other provisions of the order, as amended;

5. That the order, as amended, regulates the handling of milk in the same manner as a marketing agreement, as amended, upon which hearings have been held; and

6. That the issuance of the order, as amended, and all of its terms and conditions will tend to effectuate the declared policy of the act.

IT IS HEREBY ORDERED that such handling of milk in the Greater Boston, Massachusetts, marketing area as is in the current of interstate commerce or as directly burdens, obstructs, or affects interstate commerce shall, from the effective date hereof, be in compliance with the following terms and conditions:

SEC. 904.1 Definitions. (a) **TERMS.** The following terms shall have the following meanings:

(1) The term "act" means the Agricultural Marketing Agreement Act of 1937 which reenacts and further amends Public Act. No. 10, 73d Congress, as amended.

(2) The term "Secretary" means the Secretary of Agriculture of the United States.

(3) The term "Greater Boston, Massachusetts, marketing area," hereinafter called the "marketing area," means the territory included within the boundary lines of the cities and towns of Arlington, Belmont, Beverly, Boston, Braintree, Brookline, Cambridge, Chelsea, Dedham, Everett, Lexington, Lynn, Malden, Marblehead, Medford, Melrose, Milton, Nahant, Needham, Newton, Peabody, Quincy, Reading, Revere, Salem, Saugus, Somerville, Stoneham, Swampscott, Wakefield, Waltham, Watertown, Wellesley, Weymouth, Winchester, Winthrop, and Woburn, Massachusetts.

(4) The term "person" means any individual, partnership, corporation, association, or any other business unit.

(5) The term "producer" means any person who, in conformity with the health regulations which are applicable to milk which is sold for consumption as milk in the marketing area, produces milk and distributes or delivers to a handler, milk of his own production.

(6) The term "handler" means any person, irrespective of whether such person is a producer or an association of producers, wherever located or operating, who engages in such handling of milk, which is sold as milk or cream in the marketing area, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects interstate or foreign commerce in milk and its products.

(7) The term "producer-handler" means any handler who is also a producer and who receives no milk from other producers and who either (a) has average daily receipts of less than 1,000 pounds of milk from his own farm production, or (b) uses for the processing and packaging of the milk distributed by him facilities located on a farm on which at least 25 percent of his own production is made.

(8) The term "market administrator" means the person designated pursuant to Sec. 904.2 as the agency for the administration hereof.

(9) The term "delivery period" means the current marketing period from the effective date hereof to and including the last day of that month. Subsequent to that month "delivery period" means the current marketing period from the first to and including the last day of each month.

SEC. 904.2. Market administrator. (a) **SELECTION, REMOVAL, AND BOND.** The market administrator shall be selected by the Secretary and shall be subject to removal by him at any time. The market administrator shall, within 45 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary.

(b) **COMPENSATION.** The market administrator shall be entitled to such reasonable compensation as may be determined by the Secretary.

(c) **POWERS.** The market administrator shall have power:

(1) To administer the terms and provisions hereof; and

(2) To receive, investigate, and report to the Secretary complaints of violations of the terms and provisions hereof.

(d) **DUTIES.** The market administrator, in addition to the duties hereinafter described shall:

(1) Keep such books and records as will clearly reflect the transactions provided for herein;

(2) Submit his books and records to examination by the Secretary at any and all times;

(3) Furnish such information and such verified reports as the Secretary may request;

(4) Obtain a bond with reasonable security thereon covering each employee who handles funds entrusted to the market administrator;

(5) Publicly disclose to handlers and producers, unless otherwise directed by the Secretary, the name of any person who, within 15 days after the date upon which he is required to perform such acts, has not (a) made reports pursuant to Sec. 904.5 or (b) made payments pursuant to Sec. 904.8;

(6) Employ and fix the compensation of such persons as may be necessary to enable him to administer the terms and provisions hereof; and

(7) Pay out of the funds provided by Sec. 904.10, (a) the cost of his bond and of the bonds of such of his employees as handle funds entrusted to the market administrator, (b) his own compensation,

and (c) all other expenses which will necessarily be incurred by him for the maintenance and functioning of his office and the performance of his duties.

(e) **RESPONSIBILITY.** The market administrator, in his capacity as such, shall not be held responsible in any way whatsoever to any handler, or to any other person, for errors in judgment, for mistakes, or for other acts either of commission or omission, except for his own willful misfeasance, malfeasance, or dishonesty.

SEC. 904.3. Classification of milk. (a) **BASIS OF CLASSIFICATION.** All milk received by a handler from producers or produced by him shall be classified in the classes set forth in paragraph (b) of this section in accordance with its utilization by him: *Provided*, subject to paragraph (c) of this section, That if milk, including skim milk, is moved to the plant of another person who distributes milk or manufactures milk products, classification of such milk may be in accordance with its utilization by such second person. Any utilization of milk claimed by a handler shall be subject to verification by the market administrator.

(b) **CLASSES OF UTILIZATION.** The classes of utilization of milk shall be as follows:

(1) Class I milk shall be all milk the utilization of which is not established as Class II milk.

(2) Class II milk shall be all milk the utilization of which is established (i) as being sold, distributed, or disposed of other than as or in milk which contains not less than one-half of 1 percent butterfat and not more than 16 percent butterfat, and other than as chocolate or flavored whole or skim milk; and (ii) as actual plant shrinkage applicable to Class II milk, to be determined by prorating the total plant shrinkage between Class I and Class II milk in proportion to the volume of milk otherwise classified in each class: *Provided*, That the quantity of shrinkage which is classified as Class II milk shall not exceed 2 percent of the milk classified pursuant to (i) of this subparagraph.

(c) **DISPOSITION OF MILK TO OTHER MARKETS.** (1) Milk received by a handler at one of his plants not subject to the provisions hereof from persons reported by him as under contract to have their milk received and paid for as part of his supply for the marketing area, shall be considered as received from producers and classified as Class I milk.

(2) Milk or skim milk disposed of by a handler to any plant not subject to the provisions hereof shall be classified as Class I milk, not to exceed the total quantity of Class I milk, or skim milk, at such plant.

SEC. 904.4 Minimum prices. (a) **CLASS I PRICES TO PRODUCERS.** Each handler shall pay producers, in the manner set forth in Sec. 904.8, for Class I milk delivered by them, not less than the following prices:

(1) \$3.38 per hundredweight during delivery periods prior to April 1, 1942, and thereafter, \$3.01 per hundredweight for such milk delivered from producers' farms to such handler's plant located not more than 40 miles from the State House in Boston: *Provided*, That with respect to Class I milk disposed of under a program approved by the Secretary for the sale or disposition of milk to low-income consumers

including persons on relief, the price shall be \$2.98 per hundredweight during delivery periods prior to April 1, 1942, and thereafter, \$2.61 per hundredweight.

(2) \$3.25 per hundredweight during delivery periods prior to April 1, 1942, and thereafter, \$2.88 per hundredweight, for such milk delivered from producers' farms to such handler's plant located more than 40 miles from the State House in Boston, less an amount per hundredweight (considering 85 pounds to one 40-quart can) equal to the lowest rail tariff, for the transportation in carlots of milk in 40-quart cans, as published in the New England Joint Tariff, M2, including revisions or supplements thereof, for the distance from the railroad shipping point for such handler's plant to such handler's railroad delivery point in the marketing area, or, if the handler has no plant in the marketing area, for the distance to Boston: *Provided*, That with respect to Class I milk disposed of under a program approved by the Secretary for the sale or disposition of milk to low-income consumers, including persons on relief, the price shall be \$2.85 per hundredweight during delivery periods prior to April 1, 1942, and thereafter \$2.48 per hundredweight, less an amount per hundredweight equal to the freight as computed above.

(3) For the purpose of this paragraph, the milk which was sold or distributed during each delivery period by each handler as Class I milk in the marketing area shall be considered to have been, first, that milk which was received from producers' farms at such handler's plant located not more than 40 miles from the State House in Boston; then, that milk which was received pursuant to Sec. 904.6 (b) at such handler's plant located not more than 40 miles from the State House in Boston; and then, that milk which was shipped from the nearest plant located more than 40 miles from the State House in Boston, including milk received at such plant pursuant to Sec. 904.6 (b).

(b) CLASS II PRICES. Each handler shall pay producers, in the manner set forth in Sec. 904.8, for Class II milk delivered by them not less than the following prices per hundredweight:

(1) In the case of such milk delivered to a handler's plant located not more than 40 miles from the State House in Boston, the price calculated pursuant to subparagraph (2) of this paragraph, plus 17 cents.

(2) Except as provided in subparagraph (3) of this paragraph, in the case of milk delivered to a handler's plant located more than 40 miles from the State House in Boston, a price which the market administrator shall calculate as follows: divide by 33.48 the weighted average price per 40-quart can of 40 percent bottling quality cream in the Boston market, as reported by the United States Department of Agriculture for the delivery period during which such milk is delivered, or the last such price reported for a delivery period if no such price is reported for the delivery period during which such milk is delivered, multiply the result by 3.7 and subtract 29 cents: *Provided*, That any plus amount for skim value shall be added which results from the average of the two following computations: (a) compute the average of all hot-roller process dry skim milk quotations, "other brands, human consumption, barrels, car lots," and for "other brands, animal feed, carlots, bags or barrels" (using midpoint of any range as one quotation), published during such delivery period in The Pro-

ducers' Price-Current, subtract $4\frac{1}{4}$ cents, multiply by 7; and (b) compute the average of all quotations (using midpoint of any range as one quotation), published during the delivery period in the Oil, Paint, and Drug Reporter, for domestic 20-30 mesh casein in bags in carlots at New York, subtract 6.6 cents and multiply by 2.2: *Provided further*, That if either computation results in a minus amount, the other shall be used in lieu of the average.

(3) During the May, June, and September delivery periods, in the case of such milk, other than route returns, made into butter at a handler's own plant more than 40 miles from the State House in Boston, the minimum price shall be computed by the market administrator, instead of the price otherwise applicable pursuant to this paragraph, as follows: from the average of the highest prices reported daily during such delivery period by the United States Department of Agriculture for 92-score butter at wholesale in the New York market, deduct 5 cents, add $16\frac{2}{3}$ percent and multiply by 3.7: *Provided*, That any plus amount shall be added which results from the skim value as computed in subparagraph (2) of this paragraph, less 15 cents.

(c) **SALES OUTSIDE THE MARKETING AREA.** The price to be paid to producers in the manner set forth in Sec. 904.8, by each handler for milk utilized as Class I milk outside the marketing area shall be:

(1) Except as provided in subparagraph (2) of this paragraph, the applicable price pursuant to paragraph (a) of this section, adjusted by (i) the difference between \$3.50, for the periods prior to April 1, 1942, and thereafter \$3.13, and the price ascertained by the market administrator as the prevailing price paid by processors for milk of equivalent use in the market where such Class I milk is utilized, and (ii) the difference between the freight allowance, if any, set forth in paragraph (a) (2) of this section and an amount equal to the lowest rail tariff for the transportation in carlots of milk in 40-quart cans, as published in the New England Joint Tariff, M2, including revisions or supplements thereof, for the distance from the railroad shipping point for the plant where such Class I milk is received from producers to the railroad delivery point serving the market where such Class I milk is utilized: *Provided*, That if the market where such Class I milk is utilized is less than 10 miles from the plant where such Class I milk is received from producers, or if such plant is located not more than 40 miles from the State House in Boston, the railroad shipping point for such plant shall be presumed to be the railroad delivery point serving such market: *And provided further*, That in no event shall the adjusted price be less than the applicable Class II price set forth in (b) (1) and (2) of this section.

(2) For Class I milk sold or distributed in milk marketing areas numbers 10A, 10D, 13A, 14A, 15A, 16A, 16B, and 17, as defined by official orders of the Milk Control Board of the Commonwealth of Massachusetts, in effect on May 1, 1941, the prices applicable pursuant to paragraph (a) of this section.

(d) **PUBLICATION OF CLASS II PRICES.** On or before the 5th day after the end of each delivery period, the market administrator shall publicly announce the Class II price in effect for such delivery period.

SEC. 904.5. Reports of handlers. (a) **PERIODIC REPORTS.** On or before the 8th day after the end of each delivery period, each handler who receives milk from producers shall, with respect to milk or cream

which was received or produced by such handler during such delivery period, report to the market administrator in the detail and form prescribed by the market administrator, as follows:

(1) The receipts at each plant from producers, including the quantity, if any, produced by such handler.

(2) The receipts at each plant from any other handler, including any handler who is also a producer.

(3) Receipts at each plant pursuant to Sec. 904.6 (b).

(4) The respective quantities of milk which were sold, distributed or used, including sales to other handlers, for the purpose of classification pursuant to Sec. 904.3.

(b) **REPORTS OF HANDLERS WHO RECEIVE NO MILK FROM PRODUCERS.** Handlers who receive no milk from producers shall make reports to the market administrator at such time and in such manner as the market administrator may require.

(c) **REPORTS AS TO PRODUCERS.** Each handler shall report to the market administrator:

(1) Within 10 days after the market administrator's request with respect to any producer for whom such information is not in the files of the market administrator, and with respect to a period or periods of time designated by the market administrator: (a) the name, post office address, and farm location, (b) the total pounds of milk delivered, (c) the average butterfat test of milk delivered, and (d) the number of days upon which the deliveries were made;

(2) Within 10 days after any producer begins or resumes milk deliveries: (a) the name, post office address, and farm location of such producer, (b) the date upon which such producer began or resumed milk deliveries, (c) the plant at which such producer delivered milk, and (d) the plant, if known, at which such producer delivered milk immediately prior to the beginning of delivery to such handler;

(3) Within 5 days after any producer has failed to make deliveries for 5 consecutive days: (a) the name, post office address, and farm location of such producer, (b) the date upon which milk was last received, (c) the plant at which such producer delivered milk, and (d) the reason, if known, for such failure to deliver;

(4) Within 10 days after any producer moves from one farm to another: (a) the name, post office address, and location of the respective farms operated by such producer, and (b) the date upon which milk was first received from the new location; and

(5) On or before the 8th day after the end of each delivery period each handler shall report the names of any persons whose milk he is reporting pursuant to Secs. 904.3 (c) and 904.6 (b) and include a certification that these persons have contracts as specified therein.

(d) **REPORTS OF PAYMENTS TO PRODUCERS.** Each handler shall submit to the market administrator, within 10 days after his request made not earlier than 20 days after the end of the delivery period, his producer pay roll for such delivery period, which shall show for each producer: (a) the daily and total pounds of milk delivered with the average butterfat test thereof and (b) the net amount of such handler's payments to such producer with the prices, deductions, and charges involved.

(e) **OUTSIDE CREAM PURCHASES.** Each handler shall report, as requested by the market administrator, his purchases, if any, of bottling

quality cream from handlers who receive no milk from producers, showing the quantity and the source of each such purchase and the cost thereof, at Boston.

(f) **VERIFICATION OF REPORTS.** In order that the market administrator may submit verified reports to the Secretary pursuant to Sec. 904.2 (d) (3), each handler shall permit the market administrator or his agent, during the usual hours of business to (a) verify the information contained in reports submitted in accordance with this section and (b) weigh, sample, and test milk for butterfat.

SEC. 904.6 Application of provisions. (a) **HANDLERS WHO RECEIVE NO MILK FROM PRODUCERS.** The provisions hereof, except as set forth in Sec. 904.5, shall not apply to a producer-handler nor to a handler whose sole source of milk supply consists of receipts from other handlers.

(b) **PRODUCERS FOR OTHER MARKETS.** Milk received from producers who are reported by a handler as under contract to have their milk received and paid for as part of that handler's supply for a market other than the marketing area, shall be reported under a separate category, and the provisions of Sec. 904.8 and Sec. 904.9 shall not apply except that such handler shall make payment as provided for in Sec. 904.8 (h).

(c) **MILK RECEIVED FROM PRODUCERS WHO ARE ALSO HANDLERS.** Milk of a handler's own production which is delivered in bulk to another handler shall be considered as being delivered by a producer unless the receiving handler is a producer-handler.

(d) **HANDLERS WITH LESS THAN 10 PERCENT OF TOTAL RECEIPTS AS CLASS I IN THE MARKETING AREA.** In the case of a handler, not including a cooperative association, as qualified pursuant to Sec. 904.9 (a), who sells or distributes as Class I milk in the marketing area less than 10 percent of his total receipts of milk, the provisions hereof shall not apply except as follows:

(1) The handler shall, with respect to his total receipts and utilization of milk, make reports to the market administrator at such time, and in such manner, as the market administrator may require, and allow verification of such reports by the market administrator.

(2) The handler shall, with respect to that quantity of milk received from producers and actually sold or distributed as Class I milk in the marketing area, make payments as provided for in Sec. 904.8 (g) and Sec. 904.10.

(e) **MILK SUBJECT TO THE NEW YORK ORDER.** The provisions hereof shall not apply to the handling of milk received at any handler's plant which is subject to the provisions of the order regulating the handling of milk in the New York metropolitan marketing area (Order No. 27), issued by the Secretary effective as of September 1, 1938, as amended, or of any order superseding or amending such orders.

SEC. 904.7 Determination of uniform prices to producers. (a) **COMPUTATION OF VALUE OF MILK FOR EACH HANDLER.** For each delivery period the market administrator shall compute, subject to the provisions of Sec. 904.6, the value of milk sold, distributed, or used by each handler, which was not received from other handlers, or pursuant to Sec. 904.6 (b), in the following manner:

(1) Multiply the quantity of milk in each class by the price applicable pursuant to paragraphs (a), (b), and (c), of Sec. 904.4; and

(2) Add together the resulting value of each class.

(b) **COMPUTATION AND ANNOUNCEMENT OF UNIFORM PRICES.** The market administrator shall compute and announce the uniform prices per hundredweight of milk delivered during each delivery period in the following manner:

(1) Combine into one total the respective values of milk, computed pursuant to paragraph (a) of this section, for each handler from whom the market administrator has received at his office, prior to the 11th day after the end of such delivery period, the report for such delivery period and the payments required by Sec. 904.8 (b) (3) and (g) and (h) for milk received during each delivery period since the effective date of the most recent amendment hereof;

(2) Add the total amount of payments required from handlers pursuant to Sec. 904.8 (g) and (h);

(3) Add the total net amount of the differentials applicable pursuant to Sec. 904.8 (e);

(4) Subtract the total amount to be paid to producers pursuant to Sec. 904.8 (b) (2);

(5) Subtract the total of payments required to be made for such delivery period pursuant to Sec. 904.9 (b);

(6) Divide by the total quantity of milk which is included in these computations except that milk required to be paid for pursuant to Sec. 904.8 (b) (2), the quantity of milk included in the computation pursuant to Sec. 904.8 (g), and the quantity of milk received pursuant to Sec. 904.6 (b);

(7) Subtract not less than 4 cents nor more than 5 cents for the purpose of retaining a cash balance in connection with the payments set forth in Sec. 904.8 (b) (3);

(8) Add an amount which will prorate, pursuant to paragraph (c) of this section, any cash balance available; and

(9) On the 12th day after the end of each delivery period, mail to all handlers and publicly announce (a) such of these computations as do not disclose information confidential pursuant to the act, (b) the blended price per hundredweight which is the result of these computations, (c) the names of the handlers whose milk is included in the computations, and (d) the Class II price.

(c) **PRORATION OF CASH BALANCE.** For each delivery period the market administrator shall prorate, by an appropriate addition pursuant to paragraph (b) of this section, the cash balance, if any, in his hands from payments made by handlers for milk received during any delivery period to meet obligations arising out of Sec. 904.8 (b) (3).

SEC. 904.8. Payments for milk. (a) **ADVANCE PAYMENTS.** On or before the 10th day after the end of each delivery period, each handler shall make payment to producers for the approximate value of milk received during the first 15 days of such delivery period. In no event shall such advance payment be at a rate less than the Class II price for such delivery period.

(b) **FINAL PAYMENTS.** On or before the 25th day after the end of each delivery period, each handler shall make payment, subject to the butterfat differential set forth in paragraph (d) of this section, for the total value of milk received during such delivery period as required to be computed pursuant to Sec. 904.7 (a), as follows:

(1) To each producer, except as set forth in subparagraph (2) of this paragraph at not less than the blended price per hundredweight, computed pursuant to Sec. 904.7 (b), subject to the differentials set forth in paragraph (e) of this section, for the quantity of milk delivered by such producer;

(2) To any producer, who did not regularly sell milk for a period of 30 days prior to February 9, 1936, to a handler or to persons within the marketing area, at not less than the Class II price in effect for the plant at which such producer delivered milk, except that during the May, June, and September delivery periods the price pursuant to Sec. 904.4 (b) (3) shall apply, for all the milk delivered by such producer during the period beginning with the first regular delivery of such producer and continuing until the end of 2 full calendar months following the first day of the next succeeding calendar month; and

(3) To producers, through the market administrator, by paying to, on or before the 23d day after the end of each delivery period, or receiving from the market administrator on or before the 25th day after the end of each delivery period, as the case may be, the amount by which the payments required to be made pursuant to subparagraphs (1) and (2) of this paragraph are less than or exceed the value of milk as required to be computed for such handler pursuant to Sec. 904.7 (a), as shown in a statement rendered by the market administrator on or before the 20th day after the end of such delivery period.

(c) **ADJUSTMENTS OF ERROR IN PAYMENTS.** Whenever verification by the market administrator of reports or payments of any handler discloses errors made in payments pursuant to paragraph (b) (3) of this section, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment to any producer for milk delivered to any handler discloses payment to such producer of a less amount than is required by this section, the handler shall make up such payment to the producer not later than the time of making final payment for the period in which such error is disclosed.

(d) **BUTTERFAT DIFFERENTIAL.** If any producer has delivered to any handler during any delivery period milk having an average butterfat content other than 3.7 percent, such handler shall, in making the payments to such producer prescribed by subparagraphs (1) and (2) of paragraph (b) of this section, add for each one-tenth of 1 percent of average butterfat content above 3.7 percent or deduct for each one-tenth of 1 percent of average butterfat content below 3.7 percent an amount per hundredweight which shall be calculated by the market administrator as follows: Divide by 33.48 the weighted average price per 40-quart can of 40 percent bottling quality cream in the Boston market, as reported by the United States Department of Agriculture

for the period between the 16th day of the preceding month and the 15th day inclusive of the delivery period during which such milk is delivered, or the last such price reported for a delivery period if no such price is reported for the period between the 16th day of the preceding month and the 15th day inclusive of the delivery period during which such milk is delivered, subtract 1.5 cents and divide the result by 10.

(e) **LOCATION DIFFERENTIALS.** The payments to be made to producers by handlers pursuant to paragraph (b) (1) of this section, shall be subject to differentials as follows:

(1) With respect to milk delivered by a producer to a handler's plant located more than 40 miles from the State House in Boston, there shall be deducted an amount per hundredweight (considering 85 pounds to one 40-quart can) equal to the lowest rail tariff, for the transportation in carlots of milk in 40-quart cans, as published in the New England Joint Tariff, M2, including revisions or supplements thereof, for the distance from the railroad shipping point for such handler's plant to Boston.

(2) With respect to milk delivered by a producer to a handler's plant located not more than 40 miles from the State House in Boston, there shall be added 13 cents per hundredweight.

(3) With respect to milk delivered by a producer, whose farm is located more than 40 miles but not more than 80 miles from the State House in Boston, there shall be added 23 cents per hundredweight, unless such addition gives a result greater than \$3.38 prior to April 1, 1942, and thereafter \$3.01, in which event there shall be added an amount which will give as a result such price.

(4) With respect to milk delivered by a producer, whose farm is located not more than 40 miles from the State House in Boston or whose farm is located in Barnstable or Plymouth Counties, Massachusetts, there shall be added 46 cents per hundredweight, unless such addition gives a result greater than \$3.38 prior to April 1, 1942, and thereafter \$3.01, in which event there shall be added an amount which will give as a result such price.

(f) **OTHER DIFFERENTIALS.** In making the payments to producers set forth in subparagraphs (1) and (2) of paragraph (b) of this section, handlers may make deductions as follows:

(1) With respect to milk delivered by producers to a handler's plant which is located outside the marketing area and more than 14 miles but not more than 40 miles from the State House in Boston, an amount equal to 10 cents per hundredweight of Class I milk actually sold or distributed in the marketing area from such plant, such total amount to be deducted pro rata on all milk delivered by such producers.

(2) With respect to milk delivered by producers to any handler's plant from which the average daily shipment of Class I milk during any delivery period is: (a) less than 17,000 but greater than 8,500 pounds, an aggregate amount, prorated among producers delivering milk to such plant, equal to the difference between the freight to the plant in the marketing area where the milk is first received at the lowest carload rate in 40-quart cans and the freight at the rate for shipments of 100 40-quart cans on the Class I milk shipped during such delivery period and (b) less than 8,500 pounds an ag-

gregate amount, prorated among producers delivering milk to such plant equal to the difference between the freight to the plant in the marketing area where the milk is first received at the lowest carload rate in 40-quart cans and the freight at the less-than-carload rate in 40-quart cans in milk cars on the Class I milk shipped during such delivery period.

(g) **PAYMENTS BY HANDLERS WITH LESS THAN 10 PERCENT OF TOTAL RECEIPTS AS CLASS I IN THE MARKETING AREA.** Handlers subject to Sec. 904.6 (d) shall pay to producers through the market administrator, on or before the 23d day after the end of the delivery period, the value determined by multiplying the quantity of Class I milk disposed of in the marketing area by the difference between the prices applicable pursuant to Sec. 904.4 (a) and the prices applicable pursuant to subparagraphs (1) and (2) of Sec. 904.4 (b).

(h) **PAYMENTS FOR MILK RECEIVED FROM PRODUCERS FOR OTHER MARKETS.** On or before the 23d day after the end of each delivery period, handlers who received milk pursuant to Sec. 904.6 (b) shall pay to producers through the market administrator the value determined by multiplying the quantities of such milk in each class by the prices applicable pursuant to Sec. 904.4 and subtracting the value of such milk at the Class II prices in effect for the plants at which such milk is received.

(i) **STATEMENTS TO PRODUCERS.** In making the payments to producers prescribed by subparagraphs (1) and (2) of paragraph (b) of this section, each handler shall furnish each producer with a supporting statement, in such form that it may be retained by the producer, which shall show:

(1) The delivery period, and the identity of the handler and of the producer;

(2) The total pounds and average butterfat test of milk delivered by the producer;

(3) The minimum rate or rates at which payment to the producer is required under the provisions of paragraphs (b), (d), and (e) of this section;

(4) The rate for such milk delivered from the producer's farm to the handler's plant, which is used in making the payment if other than the applicable minimum rate;

(5) The amount or the rate per hundredweight of each deduction claimed by the handler, including any deductions claimed under Sec. 904.8 (f) and Sec. 904.9 together with a description of the respective deductions; and

(6) The net amount of payment to the producer.

SEC. 904.9 Payments to cooperative associations. (a) **ELIGIBILITY OF COOPERATIVE ASSOCIATIONS.** Upon application to the Secretary, any cooperative association duly organized under the laws of any State which he determines, after appropriate inquiry or investigation, to be conforming to the provisions of such laws and of the Capper-Volstead Act, as amended, as to character of organization, voting requirements, dividend payments, dealing in products of non-members; to be operating as a responsible producer-controlled marketing association exercising full authority in the sale of the milk of its members; to be systematically checking the weights and tests of milk delivered by its members to plants other than those which

may be operated by itself; to guarantee payments to its producers; to be maintaining, either individually or in collaboration with other qualified cooperative associations, a competent staff for dealing with marketing problems and providing information to its members with whom close working relationships are constantly maintained; to be collaborating with other similar associations in activities incident to the maintenance and strengthening of collective bargaining by producers and the operation of a plant of uniform pricing of milk to handlers; and to be complying with all provisions of this order applicable to such cooperative association, shall be entitled to receive payments in the amount and under the conditions herein specified from the date of qualification, as fixed by the Secretary, until it has been found by the Secretary after notice and opportunity for a hearing, that it has failed to continue to meet any condition or to maintain and exercise the authority or to perform any of the functions required by this section for the receipt or use of such payments.

(1) Any such cooperative association shall receive an amount computed at not more than the rate of $11\frac{1}{2}$ cents per hundredweight of milk marketed by it on behalf of its members in conformity with the provision of this order, the value of which is determined pursuant to Sec. 904.7 (a), and with respect to which a handler has made payments as required by Sec. 904.8 (b) (3) and Sec. 904.10: *Provided*, That the amount paid shall not exceed the amount which handlers are obligated to deduct from payments to members under subsection (c) hereof and are not used in paying patronage dividends or other payments to members with respect to milk delivered except in fulfilling the guarantee of payments to producers; and that in cases where two or more associations participate in the marketing of the same milk, payment under this paragraph shall be available only to the association which the individual producer has made his exclusive agent in the marketing of such milk.

(2) Any such cooperative association shall receive an amount computed at the rate of 5 cents per hundredweight on Class I milk received from producers at a plant operated under the exclusive control of member producers, which is sold to proprietary handlers. This amount shall not be received on milk sold to stores, to handlers, in which the cooperative has any ownership, or to a handler with which the cooperative has such sales arrangements that its milk not sold as Class I milk to such handler is not available for sale as Class I milk to other handlers.

(b) **PAYMENT TO QUALIFIED COOPERATIVE ASSOCIATIONS.** The market administrator shall, upon claim submitted in form as prescribed by him, make payments authorized under paragraph (a), or issue credit therefor out of the cash balance credited pursuant to Sec. 904.7 (b) (5), on or before the 25th day after the end of each delivery period, subject to verification of the receipts and other items on which the amount of such payment is based.

(c) **REPORTS.** Each cooperative association qualified to receive payments pursuant to this section shall, from time to time, as requested by the market administrator, make reports to him with respect to the use of such payments and the performance of any service or function set forth as the basis for such payment, and shall file with him a copy of its balance sheet and operating statement at the close of each fiscal year.

(d) **SUSPENSION.** The market administrator shall suspend payments upon request by the Secretary or such officer of the Department of Agriculture as he may designate, or upon his own initiative, by giving written notice to such association whenever there is reason to believe that a beneficiary of such payments is no longer qualified. Such suspended payments shall be segregated and held in reserve until the Secretary has, after notice and opportunity for a hearing, ruled upon the performance of the cooperative and either ordered the suspended payment to be paid to it in whole or in part, or disqualified such cooperative, in which event the balance of payments held in reserve shall be added to the cash balance, if any, in his hands pursuant to Sec. 904.8 (b) (3).

(e) **AUTHORIZED MEMBER DEDUCTIONS.** In the case of producers whose milk is received at a plant not operated by a cooperative association of which such producers are members and which is receiving payments pursuant to this section, each handler shall make such deductions from the payments to be made to such producers pursuant to Sec. 904.8 as may be authorized by such producers and, on or before the 25th day after the end of each delivery period, pay over such deductions to the association in whose favor such authorizations were made.

SEC. 904.10 Expense of administration. (a) **PAYMENTS BY HANDLERS.** As his prorata share of the expense of the administration hereof, each handler, except as set forth in Sec. 904.6 (a), shall, on or before the 23d day after the end of each delivery period, pay to the market administrator a sum not exceeding 2 cents per hundred-weight with respect to all milk actually delivered to him during such delivery period by producers or produced by him; the exact sum to be determined by the market administrator subject to review by the Secretary: *Provided*, That each handler, which is a cooperative association of producers, shall pay such prorata share of expense of administration only on that milk actually received from producers at a plant of such association, and each handler subject to Sec. 904.6 (d) shall pay such prorata share of expense of administration only on that quantity of milk actually sold or distributed in the marketing area as Class I.

(b) **SUITS BY MARKET ADMINISTRATOR.** The market administrator may maintain a suit in his own name against any handler for the collection of such handler's prorata share of expense set forth in this section.

SEC. 904.11 Effective time, suspension, or termination. (a) **EFFECTIVE TIME.** The provisions hereof, or any amendment hereto, shall become effective at such time as the Secretary may declare and shall continue in force until suspended, or terminated, pursuant to paragraph (b) of this section.

(b) **SUSPENSION OR TERMINATION.** The Secretary may suspend or terminate this order or any provision hereof whenever he finds that this order or any provision hereof obstructs or does not tend to effectuate the declared policy of the act. This order shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

(c) **CONTINUING POWER AND DUTY OF THE MARKET ADMINISTRATOR.** If, upon the suspension or termination of any or all provisions hereof,

there are any obligations arising hereunder, the final accrual or ascertainment of which requires further acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: *Provided*, That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate.

(1) The market administrator, or such other person as the Secretary may designate, shall (a) continue in such capacity until removed by the Secretary, (b) from time to time account for all receipts and disbursements, and when so directed by the Secretary deliver all funds on hand, together with the books and records of the market administrator or such person, to such person as the Secretary shall direct, and (c) if so directed by the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant thereto.

(d) **LIQUIDATION AFTER SUSPENSION OR TERMINATION.** Upon the suspension or termination of any or all provisions hereof the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions hereof, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

IN WITNESS WHEREOF, I, CLAUDE R. WICKARD, Secretary of Agriculture of the United States, have executed in duplicate and issued this order, as amended, and have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed hereto in the city of Washington, District of Columbia, this 28th day of July 1941. I hereby order that sections 904.4 (a) and (c) of this order, as amended, shall become effective at 12:01 a. m., e. d. s. t., August 1, 1941, and that the remaining sections and provisions of this order, as amended, shall become effective at 12:01 a. m., e. d. s. t., August 1, 1941.

[SEAL]

CLAUDE R. WICKARD,
Secretary of Agriculture.

{fol. 66] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA

No. 8343

DELBERT O. STARK, et al., Appellants,

vs.

CLAUDE R. WICKARD, Secretary of Agriculture &c., Appellee

MINUTE ENTRY—March 3, 1943

Argument commenced by Mr. Harry Polikoff, attorney for appellants, continued by Mr. John S. L. Yost, attorney for appellee, and concluded by Mr. Harry Polikoff.

[fol. 67] IN UNITED STATES COURT OF APPEALS FOR THE DIS-
TRICT OF COLUMBIA

No. 8343

DELBERT O. STARK, et al., Appellants,

v.

CLAUDE R. WICKARD, Secretary of Agriculture of the United
States

Appeal from the District Court of the United States for the
District of Columbia

Decided June 14, 1943

Mr. Harry Polikoff, with whom *Mr. Walter J. Brobyn* was on the brief, for appellants.

Mr. John S. L. Yost, Special Assistant to the Attorney General, with whom *Miss Margaret H. Brass*, Special Attorney, Department of Justice, was on the brief, for appellee.

Mr. Charles W. Wilson filed a brief as *amicus curiae* on behalf of the New England Milk Producers' Association, urging affirmance.

Before Parker, Circuit Judge, sitting by designation, and
Miller and Vinson, Associate Justices

OPINION

MILLER, *Associate Justice*:

Under the Agricultural Marketing Agreement Act of 1937,¹ the Secretary of Agriculture issued an amended order,² Number 4, effective August 1, 1941, regulating the handling of milk in the Greater Boston marketing area. That order is the subject of dispute in this case. Section 904.7 of the Order requires the market administrator—who was appointed by the Secretary, pursuant to the Act—to compute the value of milk sold, distributed, or used, by each handler of milk who is subject thereto, in accordance with the formula therein-prescribed, and to announce uniform prices per hundredweight of milk delivered during each delivery period. Section 904.4 of the Order establishes minimum prices for milk and requires handlers to pay to producers not less than those prices. Section 904.9 of the Order requires the market administrator to make certain payments³ to cooperative associations of producers, which the Secretary may determine to be qualified to receive them, in accordance with the provisions of the Order.⁴

¹ 50 Stat. 246, § 8c, 7 U. S. C. A. § 608c.

² 7 CFR 904-904.0; 6 Fed. Reg. 3762.

³ § 904.9 (b) "Payment to Qualified Cooperative Associations. The market administrator shall, upon claim submitted in form as prescribed by him, make payments authorized under paragraph (a), or issue credit therefor out of the cash balance credited pursuant to Sec. 904.7 (b) (5), on or before the 25th day after the end of each delivery period, subject to verification of the receipts and other items on which the amount is based."

⁴ § 904.9 (a) "Eligibility of Cooperative Associations. Upon application to the Secretary, any cooperative association duly organized under the laws of any State which he determines, after appropriate inquiry or investigation, to be conforming to the provisions of such laws and of the Capper-Volstead Act, as amended, as to character of organization, voting requirements; divided payments, dealing in products of non-members; to be operating as a responsible

[fol. 68] Appellants, who were plaintiffs in the District Court, are producers of milk who sell to handlers in the Greater Boston area. These handlers, in turn, are subject to Order No. 4. Appellants are not members of a cooperative association; and many of them voted against adoption of Order No. 4, as amended, when it was submitted to a producers' referendum. In their complaint appellants challenged the action of the Secretary in issuing Order No. 4. They contend that he was without legal authority to incorporate therein Sections 904.9 (a)-(d) and 904.7 (b) (5); that these sections are unlawful and void; and, particularly, that the Secretary is without legal authority to make any qualifications of any cooperative association, as eligible for the payments specified in the disputed sections of Order No. 4, or to certify any such association for that purpose. They sought an injunction to restrain him from qualifying, or certifying the qualification of, any cooperative association of producers. They sought, also, a judgment declaring the provisions of Section 904.9 (a)-(d) and of Section 904.7 (b) (5) to be unauthorized, illegal and void. The trial

producer-controlled marketing association exercising full authority in the sale of the milk of its members; to be systematically checking the weights and tests of milk delivered by its members to plants other than those which may be operated by itself; to guarantee payments to its producers; to be maintaining, either individually or in collaboration with other qualified cooperative associations, a competent staff for dealing with marketing problems and providing information to its members with whom close working relationships are constantly maintained; to be collaborating with other similar associations in activities incident to the maintenance and strengthening of collective bargaining by producers and the operation of a plan of uniform pricing of milk to handlers; and to be complying with all provisions of this order applicable to such cooperative association, shall be entitled to receive payments in the amount and under the conditions herein specified from the date of qualification, as fixed by the Secretary, until it has been found by the Secretary after notice and opportunity for a hearing, that it has failed to continue to meet any condition or to maintain and exercise the authority or to perform any of the functions required by this section for the receipt or use of such payments."

judge, relying upon the decision of this court in *Wallace v. Ganley*,⁵ decided that appellants were without standing to challenge the validity of the Order; he held that appellants' complaint failed to state a claim upon which relief could be granted, and dismissed the complaint. This appeal followed. The only question which we need decide is whether appellants have standing to seek review of the Secretary's Order. We conclude that they have not.

The Supreme Court has classified the rights which may be the subject of vindication by an action such as the present: "• • • a legal right,—one of property, one arising out of contract, one protected against tortious invasion, or one founded on a statute which confers a privilege."⁶ Appellants do not specify, exactly, either in their complaint or in their brief, which, of the four rights, they claim theirs to be. In paragraph three of the complaint they allege that they produce milk and sell it to handlers. Without more, this would identify their rights as arising out of contract; [fol. 69] and make applicable to them the language of *Wallace v. Ganley*:⁷ "The only legal rights of the appellees which appear in these cases arise under their contracts with the handlers or distributors of milk • • • The only violation of rights which could be suffered or threatened would be by breach of contract. But in neither case do the appellees allege that a breach of contract has taken place; nor that the Dairies, who are—with them—parties to their several contracts, have threatened a breach of contract; nor that the threatened enforcement of the act and order by the Secretary will cause the Dairies to break their contracts; nor that the Dairies have notified them that as a result of the act and order the Dairies will pay them less than is provided by their contracts; nor even that the Dairies have

⁵ 68 App. D. C. 235; 95 F. (2d) 364.

⁶ *Tennessee Power Co. v. T. V. A.*, 306 U. S. 118, 137-138, citing *In re Ayers*, 123 U. S. 443; *Walla Walla v. Walla Walla Water Co.*, 172 U. S. 1; *American School of Magnetic Healing v. McAnnulty*, 187 U. S. 94; *ex parte Young*, 209 U. S. 123; *Scully v. Bird*, 209 U. S. 481; *Philadelphia Co. v. Stimson*, 223 U. S. 605; *Lane v. Watts*, 234 U. S. 525; *Truax v. Raich*, 239 U. S. 33; *Lipke v. Lederer*, 259 U. S. 557.

⁷ *Wallace v. Ganley*, 68 App. D. C. 235, 237, 95 F. (2d) 364, 366.

notified them that they intend to comply with the order, much less that as a result they will not carry out the terms of their contracts."

But, appellants contend, they are not in exactly the same position as the producers in the *Wallace* case. There the constitutionality of the Act was challenged. Hence, as the producers placed no reliance upon the Act, they could claim none of its benefits. Consequently, the only rights which could have been reflected by their complaint arose, of necessity, from their contracts. In the present case, appellants assume the validity of the Act, and claim rights arising from it, namely, rights to receive the minimum prices therein provided for. Proceeding upon this assumption, they contend, first, that the formula prescribed by the Secretary, in his order for determining minimum prices, was improper; and, second, that they, as beneficiaries under the Act, are empowered to challenge that order by means of the proceeding which they initiated in the present case. Presumably, therefore, appellants are assuming a right "founded on a statute which confers a privilege."⁸

Coming, then, to an examination of this assumption, and conceding its validity, solely for the purpose of argument, it will be noted that Congress made no provision in the Agricultural Marketing Agreement Act for review, upon the petition of milk producers, even in the capacity of "private Attorney Generals,"⁹ or as "King's proctors," to vindicate the public interest;¹⁰ as it has done in some of its enactments during recent years.¹¹ Appellants recognize this fact

⁸ *Tennessee Power Co. v. T. V. A.*, 306 U. S. 118, 137-138.

⁹ *Associated Industries of New York State v. Ickes*, 2 Cir., 134 F. (2d) 694.

¹⁰ See *Edgerton; J.*, concurring in *Colorado Radio Corp. v. Federal Communications Comm'n.* 118 F. (2d) 24, 28.

¹¹ See, generally, Mr. Justice Douglas, dissenting in *Federal Communications Commission v. National Broadcasting Company*, U. S. , decided May 17, 1943, 11 U. S. L. W. 4385, 4391; *Federal Communications Commission v. Sanders Radio Station*, 309 U. S. 470, 477; *Scripps-Howard Radio, Inc. v. Federal Communications Comm'n.*, 316 U. S. 4, 14-15; *Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U. S. 261, 268-269; *Federal Trade Comm. v. Klesner*, 280 U. S. 19, 27; *Virginia Ry. v. Federation*, 300 U. S. 515, 552.

and contend, as a consequence, that the only means which they have of asserting their rights is by a complaint for injunction, as they have done in the present case. They argue that "the equalization pool" belongs to the producers, because it is derived from the sale of milk which they produce; hence, that "they must have standing to protect their own property"; that the handlers have no financial interest [fol. 70] in the fund, and that the government has no proprietary or possessory rights therein. They conclude that "appellee's agent is definitely in the position of an official trustee diverting a fund away from the statutory purpose for which the monies involved should have been paid," namely, to them, as the producers to whom they contend it belongs; hence, that "the producers who own the fund can enjoin its dissipation." Appellants emphasize, also, the injury which, they say, will result to them, unless the relief sought is granted. But it is not sufficient to show lack of remedy or injury, in order to challenge administrative action, when vindication is sought of rights founded on a statute which confers a privilege, but fails to give a right of review.¹² The doctrine, which has been worked out by the Supreme Court in a series of recent decisions, was summarized by Judge Frank, speaking for the Second Circuit, in the *Associated Industries* case:¹³ "In a suit in a federal court by a citizen against a government officer, complaining of alleged past or threatened future unlawful conduct by the defendant, there is no justiciable 'controversy,' without which, under Article III, § 2 of the Constitution, the court has no jurisdiction, unless the citizen shows that such conduct or threatened conduct invades or will invade a private substantive legally protected interest of the plaintiff citizen; such invaded interest must be either of a 'recognized' character, at 'common law' or a substantive private legally protected interest created by statute. In other words, unless the citizen first shows that, if the defendant were a private person having no official status, the particular defendant's conduct or threatened conduct would give rise to a cause of action against him by that particular citizen, the court cannot consider whether the defendant officer's con-

¹² Perkins v. Lukens Steel Co., 310 U. S. 113, 125.

¹³ *Associated Industries of New York State v. Ickes*, 2 Cir., 134 F. (2d) 694, 700. And see authorities there cited.

duct is or is not authorized by statute; for the statute comes into the case, if at all, only by way of a defense or of justification for acts of the defendant which would be unlawful as against the plaintiff unless the defendant had official authority, conferred upon him by the statute, to do those acts. Unless, then, the citizen first shows that some substantive private legally protected interest possessed by him has been invaded or is threatened with invasion by the defendant officer thus regarded as a private person, the suit must fail for want of a justiciable controversy, it being then merely a request for a forbidden advisory opinion. That the plaintiff shows financial loss on his part resulting from unlawful official conduct is not alone sufficient, for such a loss, absent any such invasion of the plaintiff's private substantive legally protected interest, is *damnum absque injuria*. Thus, for instance, financial loss resulting from increased lawful competition with a plaintiff, made possible solely by the defendant official's unlawful action, is insufficient to create a justiciable controversy. More is required, 'than a common concern for obedience to law.' "

*United States v. Rock Royal Co-operative, Inc.*¹⁴ and *Thompson v. Deal*,¹⁵ upon which appellants rely, do not support their contention. There is no reason to impress a trust [fol. 71] upon the fund here involved. Appellants are not in any real sense the equitable owners of the fund. The only right which they have with respect to it is that which they may assert against the handlers, under their contracts for sale and purchase of milk. In all other respects, their standing to sue is no different, and no greater, than is that of citizens generally.¹⁶ True it is that the Agricultural Marketing Agreement Act was passed for the benefit of milk producers; but it was also passed for the benefit of milk consumers, handlers, and the public, generally. The fact that one person or group of persons may benefit, or were intended to benefit from its operation, does not confer upon them, without more, the power or privilege of directing the law's administration. Here, unlike the *Thompson*

¹⁴ 307 U. S. 533.

¹⁵ 67 App. D. C. 327, 92 F. (2d) 478.

¹⁶ See *Perkins v. Lukens Steel Co.*, 310 U. S. 113, 125, 129; *Stearns v. Wood*, 236 U. S. 75, 78; *Fairchild v. Hughes*, 258 U. S. 126, 129-130.

case,¹⁷ the suit is one in which the court is asked to interfere with the official discretion of a government officer.

We conclude that the decision of the District Court was correct.

Affirmed.

Mr. Justice Vinson sat during the argument of this case; concurred in the result when it was considered in conference, but resigned from the Court before the opinion was prepared.

[fol. 72] IN UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA, APRIL TERM, 1943

No. 8343

DELBERT O. STARK, et al., Appellants,

vs.

CLAUDE R. WICKARD, Secretary of Agriculture of the United
States, Appellee

Appeal from the District Court of the United States for the
District of Columbia

JUDGMENT—Filed June 14, 1943

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, affirmed.

Per Mr. Justice Miller.

Dated June 14, 1943.

Mr. Justice Vinson sat during the argument of this case; concurred in the result when it was considered in conference, but resigned from the Court before the opinion was prepared.

¹⁷ 67 App. D. C. 327, 332; 92 F. (2d) 478, 483.

[fol. 73]

[File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA

[Title omitted]

DESIGNATION OF RECORD—Filed July 27, 1943

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for writ of certiorari in the above-entitled cause, and include therein the following:

1. Appendix to appellants' brief.
2. Minute entry of argument.
3. Opinion.
4. Judgment.
5. This designation.
6. Clerk's certificate.

Harry Polikoff, Attorney for Appellants.

Service

I certify that a copy of the above designation was mailed to John S. L. Yost, Special Assistant to the Attorney General, attorney for appellee, Department of Justice, Washington, D. C., this 25th day of July, 1943.

Harry Polikoff.

[fol. 74] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 75] IN THE SUPREME COURT OF THE UNITED STATES

STIPULATION AS TO RECORD

Subject to the approval of this Court, it is hereby stipulated and agreed by and between the attorneys for the respective parties hereto, that, for the purpose of the petition for a writ of certiorari, the printed record may consist of the following:

1. The appendix to brief for appellants, including Order No. 4, as amended, filed in the United States Court of Appeals for the District of Columbia.

2. The proceedings in the United States Court of Appeals for the District of Columbia.

It is further stipulated and agreed that the petitioners will cause the Clerk of the United States Court of Appeals for the District of Columbia to certify and file the entire transcript of the record now on file in his office with the Clerk of this Court, and that in the event the petition for a writ of certiorari is granted, the printed record shall consist of the proceedings in the United States Court of Appeals for the District of Columbia and such portions of the entire transcript of the record certified by the Clerk of that Court as the respective parties may designate.

[fols. 76-77] It is further stipulated and agreed that either party may refer in the petition and briefs to any portions of the certified typewritten transcript of record which are not included in the printed record to be filed in accordance with this stipulation.

Charles Fahy, Solicitor General of the United States;
Harry Polikoff, Attorney for Petitioners.

Dated this 27th day of July, 1943.

[fol. 78] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 11, 1943

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

MICRO CARD

TRADE

MARK



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